(24,436)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 282.

FRANK J. KANE, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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New Jersey Court of Errors and Appeals.

THE STATE, FRANK J. KANE, Prosecutor, Plaintiff in Error,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the Trial Below, Defendant in Error.

On Writ of Error to Supreme Court.

CASE.

Griggs & Harding, Attorneys for Plaintiff in Error.
Edmund Wilson, Attorney for Defendant in Error.

New Jersey Court of Errors and Appeals.

THE STATE, FRANK J. KANE, Prosecutor in Error,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the Trial Below, Defendant in Error.

On Certiorari.

Griggs & Harding, Att'ys of Prosecutor in Error, 152 Market Street, Paterson, N. J.

Filed Sept. 26, 1910. S. D. Dickinson, Clerk.

Writ of Error.

NEW JERSEY, *ss:*

[SEAL.]

The State of New Jersey to the Chief Justice and Other Justices of Our Supreme Court, Greeting:

Because in the record and proceedings and also in the giving of judgment in a certain action *or* Certiorari, which was in our said Supreme Court before you, between The State, Frank J. Kane, Prosecutor, and The State of New Jersey, Henry Titus, Prosecutor in the trial below, defendant, manifest error hath intervened to the great damage of the said Frank J. Kane, Prosecutor, as is said, we, being willing that the error, if any, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you distinctly and openly to send under your seal the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fifth day of October, instant, together with this writ, that the record and proceedings aforesaid being inspected we

may cause to be further done thereupon what of right and according to the law and custom of New Jersey ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the fifteenth day of September, in the year of our Lord one thousand nine hundred and ten.

S. D. DICKINSON, *Clerk.*

GRIGGS & HARDING, *Attorneys.*

Return to Writ of Error.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mentioned is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE, *C. J.* [SEAL.]

3 *Writ of Certiorari.*

NEW JERSEY, *To wit:*

[SEAL.]

The State of New Jersey to James F. Carroll, Esquire, Recorder of the Recorder's Court of the City of Paterson, in the County of Passaic, and State of New Jersey, Greeting:

We being willing, for certain reasons, to be certified of a certain judgment, conviction, order and proceedings given or made in said Recorder's Court of the City of Paterson, before you in a certain action or proceeding brought by The State of New Jersey, Henry Titus, Prosecutor therein, against Frank J. Kane, defendant therein, upon the Complaint upon oath of said Henry Titus, charging the said Frank J. Kane with having violated the Fifteenth and Sixteenth sections of an act entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," approved April 12th, 1906, and the amendment thereto approved April 16, 1908, do hereby command you, that you send under seal, to our Justices of our Supreme Court of Judicature at Trenton, New Jersey, on the fourth day of November, next, the judgment, conviction, order and proceedings aforesaid, with all things touching and concerning the same, as fully and entirely as they remain in our Court, before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right and according to law should be done.

Witness: William S. Gummere, Chief Justice of our Su-
4 preme Court at Trenton, New Jersey, the twenty-ninth day of October, nineteen hundred and eight.

WM. RIKER, JR., *Clerk.*

GRIGGS & HARDING, *Attorneys.*

This writ is allowed. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

5 New Jersey Supreme Court.

THE STATE, FRANK J. KANE, Prosecutor,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the Trial Below, Defendant.

On Certiorari.

Return to Writ of Certiorari.

In obedience to the command of the writ annexed hereto to me, James F. Carroll, Recorder of the City of Paterson, in the County of Passaic and State of New Jersey, directed, I do hereby certify and send to the Honorable Justices of the Supreme Court of Judicature of New Jersey, the judgment of conviction lately made and rendered in the Recorder's Court of the City of Paterson in the County of Passaic and State of New Jersey, before me, the Recorder of the City of Paterson aforesaid, in an action or proceeding brought by the State of New Jersey, Henry Titus, prosecutor therein against Frank J. Kane, defendant therein, upon the complaint upon oath of said Henry Titus, charging the said Frank J. Kane with having violated the fifteenth and sixteenth sections of an act entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," approved April 12th, 1906, and the amendment thereto approved April 16, 1908, and all proceedings with the complaint and warrant, the stip-
6 ulation of facts in writing made between the respective parties by the attorneys, and the propositions in writing submitted on behalf of said defendant, Frank J. Kane, and all things touching and concerning the same as fully and entirely as they remain before me, Recorder as aforesaid in said Recorder's Court, all of which are annexed hereto.

In Witness Whereof, I, James F. Carroll, Recorder of the City of Paterson, as aforesaid, have hereunto set my hand and seal of

said court this second day of November, A. D., one thousand, nine hundred and eight.

JAMES F. CARROLL, [SEAL.]
Recorder of the City of Paterson.

7 Recorder's Court of the City of Paterson, in the State of New Jersey.

THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor,
vs.
FRANK J. KANE, Defendant.

Complaint.

Henry Titus, of the City of Paterson in the County of Passaic and State of New Jersey, being duly sworn according to law on his oath, says, that deponent is a police officer of the City of Paterson, aforesaid; that on the fifth day of October, nineteen hundred and eight, Frank J. Kane, then a resident of Woodhaven, Long Island, in the state of New York, did drive his automobile which was of thirty horse power, in the State of New Jersey, and use his said automobile on the public highways of said state by driving and using his said automobile upon said public highways from Fort Lee in the County of Bergen, in the State of New Jersey to, and upon a public highway in the City of Paterson in the County of Passaic and State of New Jersey, known and designated as Washington street, without having registered said automobile, or applied to register the same, or paid the fee required therefor, or obtained any certificate or license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his true and lawful attorney upon whom all

8 original process in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey, against him may be served, and therein agreeing that any original process against him shall be of the same force and effect as if served on him within this state, in violation of the Fifteenth and Sixteenth sections of an Act of the Legislature of the State of New Jersey, entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violation," and approved April 12th, 1906, and the amendment of said Act entitled "An Act to amend an act entitled 'An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service

thereof and proceedings for the violation of the provisions of the act and penalties for said violations,' approved April 16, 1908."

Wherefore, this deponent prays that said Frank J. Kane may be apprehended and prosecuted pursuant to said Act and amendment thereof.

HENRY TITUS.

Sworn and subscribed to before me this 5th day of October, A. D., 1908.

[SEAL.] JAMES F. CARROLL,
Recorder of City of Paterson, N. J.

9 Recorder's Court of the City of Paterson, in the State of New Jersey.

THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor,
vs.
FRANK J. KANE, Defendant.

Warrant.

STATE OF NEW JERSEY,
County of Passaic, ss:

To any Police Officer of the City of Paterson in the County of Passaic:

[SEAL.] Whereas, complaint hath this day been made to me, the Recorder of the City of Paterson, in the County of Passaic and State of New Jersey, on oath by Henry Titus, a Police Officer of said city, that, on the fifth day of October, nineteen hundred and eight, Frank Kane, then a resident of Woodhaven, Long Island, in the State of New York, did drive his automobile which was of thirty horse power, in the State of New Jersey, and use his said automobile on the public highways of said State by driving and using his said automobile upon said public highways from Fort Lee in the County of Bergen, in the State of New Jersey to, and upon a public highway in the City of Paterson, in the County of Passaic, and State of New Jersey, known and designated as Washington Street, without having registered said automobile, or applied to register the same, or paid the fee required therefor, or obtained any certificate or license therefor, and without having filed with the Secretary of State of New
10 Jersey a duly executed instrument constituting the said Secretary of State his true and lawful attorney upon whom all original process in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey, against him may be served, and therein agreeing that any original process against him shall be of the same force and effect as if served on him within this State, in violation of the Fifteenth and Sixteenth sections of an Act of the Legislature of the State of New Jersey, entitled "An Act defining motor vehicles and providing for

the registration of the same and the licensing of the drivers thereof; fixing the rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," and approved April 12th, 1906, and the amendment of said Act entitled "An Act to amend an act entitled 'An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations,' approved April 16, 1908." These are, therefore, in the name of the State of New Jersey, to authorize and require you to apprehend the said Frank J. Kane if in your said city he may be found, and bring him forthwith before me, Recorder as aforesaid, to answer said complaint, and be further dealt with as the law directs; hereof you are not to fail; and for so doing this shall be your warrant. Given under my hand and seal, at my office in the said City of Paterson, this fifth day of October, nineteen hundred and eight.

JAMES F. CARROLL,
Recorder of the City of Paterson.

11 Recorder's Court of the City of Paterson, in the County of Passaic and State of New Jersey.

THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor,
vs.
FRANK J. KANE, Defendant.

Judgment of Conviction.

Be it remembered, that on the fifth day of October, nineteen hundred and eight, Frank J. Kane was brought in the Recorder's Court of the City of Paterson, in the County of Passaic and State of New Jersey, before me, the Recorder of the City of Paterson aforesaid, charged upon the Complaint of Henry Titus, a Police Officer of the City of Paterson aforesaid, duly sworn to by said Henry Titus, wherein said Henry Titus charged said Frank J. Kane, that the said Frank J. Kane, on the fifth day of October, nineteen hundred and eight, then a resident of Woodhaven, Long Island, in the State of New York, did drive his automobile which was of thirty horsepower in the State of New Jersey, and use his said automobile on the public highways of said State by driving and using his said automobile upon said public highways from Fort Lee in the County of Bergen, in the State of New Jersey, to and upon a public highway in the City of Paterson in the County of Passaic and State of New Jersey, known and designated as Washington Street, without having registered said automobile, or applied to register the same, or

paid the fee required therefor, or obtained any certificate or
2 license therefor, and without having filed with the Secretary
of State of New Jersey a duly executed instrument constitu-
ing the said Secretary of State his true and lawful Attorney upon
hom all original process in any action or legal proceedings caused
y the operation of his -aid automobile within the State of New
ersey, against him may be served and therein agreeing that any
riginal process against him shall be of the same force and effect as
f served on him within this State, in violation of the Fifteenth and
ixteenth Sections of an Act of the Legislature of the State of New
ersey, entitled "An Act defining motor vehicles and providing for
he registration of the same and the licensing of the drivers thereof;
xing rules regulating the use and speed of motor vehicles; fixing
he amount of license and registration fees, prescribing and regu-
ating process and the service thereof and proceedings for the viola-
ion of the provisions of the act and penalties for said violations,"
nd approved April 12th, 1906, and the amendment of said Act
ntitled "An Act to amend an act entitled 'An act defining motor
ehicles and providing for the registration of the same and the
icensing of the drivers thereof; fixing rules regulating the use and
peed of motor vehicles; fixing the amount of license and registra-
ion fees; prescribing and regulating process and the service thereof
nd proceedings for the violation of the provisions of the act and
enalties for said violation of the provisions of the act and penalties
or said violations,' approved April 16, 1908.

And the said Frank J. Kane, having been duly apprehended upon
warrant duly issued by said Court and returned and brought be-
ore said Court upon said charge on the day and year aforesaid, and
aving then pleaded not guilty to said charge, and the hearing and
rial thereof, having been pursuant to said act, duly and regularly
djourned until the twenty-sixth day of October, nineteen hundred
nd eight, upon which last named day he, the said Frank J. Kane,
having been put upon his trial upon said charge, and the
3 said parties, prosecutor and defendant, appearing in Court
upon said trial by the Attorney General of New Jersey and
riggs & Harding, their respective counsel, and having entered into
n agreement and stipulation in writing, wherein and whereby, the
bove parties, prosecutor and defendant, after reciting in said stip-
lation that they were desirous of avoiding the unnecessary trouble
nd expense of producing witnesses and records or documents of
he facts involved in said action before the above Court, said records
r documents being records or documents in the office of the Secre-
ary of State at Trenton, New Jersey, not removable therefrom
ithout public inconvenience and detriment, agreed that the facts
ound by the above court as hereinafter set forth, should be taken
nd received by the above Court on the trial of the above action as
rue, in the same manner and to the same extent as if the said facts
ad been proven by the evidence of witnesses and documents or
ecords produced and admitted in said Court; the said prosecutor
bove named, however, reserving the right to object to the relevancy
r materiality of said facts contained in said records or documents,

which stipulation was offered and submitted by said defendai
said prosecutor objecting to the relevancy and materiality there
pursuant to said stipulation, all the said facts therein stipulat
were received by said Court on said trial as relevant and materi
and the facts therein admitted to be true were taken, received and a
mitted by said Court as true in the same manner and to the same e
tent as if the said facts had been proven by the evidence of witnes
and documents or records produced and admitted in said Court; a
upon the oath of said Henry Titus and the fact stipulated to be tr
as aforesaid, the above court did find the following facts to be tr
viz:

That on the fifth day of October, A. D. nineteen hundred a
eight, Frank J. Kane, the above named defendant, was a resident
Woodhaven, Long Island, in the State of New York; th
14 being such resident of Woodhaven, aforesaid, on said l
named day, said Frank J. Kane did drive his automob
which was of thirty horsepower, in the State of New Jersey and
his said automobile on the public highways of said State of New Jers
by driving and using his said automobile upon said public highwa
from Fort Lee, in the County of Bergen in the State of New Jers
to, and upon a public highway in the City of Paterson, in the Cour
of Passaic and State of New Jersey, known and designated as Wa
ington Street, without having registered his said automobile, or
plied to register the same, or paid the fee required therefor, or
tained any certificate, or license therefor, and without having fi
with the Secretary of State of New Jersey a duly executed instrume
constituting the said Secretary of State his true and lawful attorn
upon whom all original process in any action or legal proceedi
caused by the operation of his said automobile within the State
New Jersey, against him may be served, and therein agreeing th
any original process against him shall be of the same force and eff
as if served on him within this state, as required and provided for
the Fifteenth and Sixteenth Sections of an act of the Legislature
the State of New Jersey, entitled "An act defining motor vehicles a
providing for the registration of the same and the licensing of
drivers thereof; fixing rules regulating the use and speed of mo
vehicles; fixing the amount of license and registration fees; prescr
ing and regulating process and the service thereof and proceedi
for the violation of the provisions of the act and penalties for s
violations," and approved April 12th, 1906, and the amendment
said Act entitled "An act to amend an act entitled 'An act defini
motor vehicles and providing for the registration of the same a
the licensing of the drivers thereof; fixing rules regulating the
and speed of motor vehicles; fixing the amount of license and reg
tration fees; prescribing and regulating process and the se
15 ice thereof and proceedings for the violation of the provisi
of the act and penalties for said violations,' approved Ap
16, 1908; that said Frank J. Kane when on Washington Street
the City of Paterson as aforesaid, was then going on his way a
driving and using his said automobile upon the highways of N
Jersey in going from the said City of Paterson to the Delaware Wa

Gap in the State of Pennsylvania, having come from Fort Lee as aforesaid, and having reached said City of Paterson as aforesaid, and while upon said Washington Street on his way to said Delaware Water Gap as aforesaid, the said Frank J. Kane was arrested and apprehended upon the complaint made and the warrant issued in the above action; that at the time of said arrest and theretofore as aforesaid, said Frank J. Kane was and had been the owner of said automobile, and kept the same with his other property at his stable or automobile building in Long Island as aforesaid permanently, except at such times as said Frank J. Kane transiently drove said automobile upon the highways, and that at the time of his arrest as aforesaid he was driving and using his said automobile upon the highways of New Jersey, only in transit from Fort Lee to the Delaware Water Gap as aforesaid; that at the time of his said arrest the said Frank J. Kane was duly licensed to drive an automobile of thirty horse power and greater than thirty horse power, upon any public highway in the State of New Jersey, whereby he was licensed to drive an automobile of the power and kind of his said automobile which was of thirty horse power, upon any public highway in the State of New Jersey, the said Frank J. Kane having been duly licensed to so drive, having fulfilled all requirements and conditions in accordance with the Seventeenth Section of said act and amendment thereof; that the said amendment of said act took effect April 16th, 1908; that a small number of automobiles were registered and a small number of persons licensed to drive automobiles during the time from April 16th, 1908, until May 1, 1908, which are not
16 herein stated; that from May 1st, 1908, until October 1st, 1908, under and pursuant to said amendment of said act, fourteen thousand and one hundred (14,100) automobiles were registered; that the total fees or amounts paid to the Commissioner of Motor Vehicles for said registration of automobiles was eighty-three thousand four hundred and thirty-eight dollars ($83,438); that from May 1, 1908, until October 1, 1908, thirteen thousand nine hundred and sixty-seven (13,967) persons were licensed to drive automobiles, and that the total fees or amounts paid to said Commissioner of Motor Vehicles for licensing said persons to drive automobiles was thirty-eight thousand two hundred and fifty dollars ($38,250); that from May 1st, 1908, to October 1st, 1908, the total amount of fines collected and received by said Commissioner of Motor Vehicles under and pursuant to said amended act was four thousand seven hundred and eighty-five dollars and fifty cents ($4,785.50); that the total amount for said fees for registration of automobiles, for said licensing said persons to drive automobiles and the said fines, all being collected and received by the said Commissioner of Motor Vehicles from May 1, 1908, to October 1, 1908, was one hundred and twenty-one thousand two hundred and thirty-six dollars and twenty-eight cents ($121,236.28); the sum of five thousand three hundred and thirty-seven dollars and thirty-two cents ($5,337.32) having been paid as fees to agents from May 1st, 1908, to October 1st, 1908, pursuant to Section 10 of said act of 1906, whereby said total sum of one hun-

dred and twenty-one thousand two hundred and thirty-six dolla
and twenty-eight cents ($121,236.28) over and above said fees pa
to agents as aforesaid, has been paid by said Commissioner of Mot
Vehicles to the Treasurer of the State of New Jersey, pursuant
said act and amendment; that from May 1, 1908, to October 1
1908, the total cost and expenses of every kind incurred in enforci
executing, carrying out and maintaining the provisions
17 said act and amendment and for doing all work or busin
and providing all things and paying all expenses requi
therefor, was twenty-two thousand seven hundred and eighty-o
dollars and one cent ($22,781.01), made up of the following ite
viz:

Commissioner's salary	$625.
Chief Inspector's salary	625.
Inspector's expenses	1,046.
Inspector's salary	2,955.
Clerical	3,321.
Expressage, Postage, etc.	1,646.
Stationery	921.
Expense of equipment	1,046.
Markers	8,818.
Purchase of Motorcycle and expenses	1,776.
Total	$22,781.

that under and pursuant to said act of 1906, from May 1st, 1906
December 31st, 1906, thirteen thousand seven hundred and fi
nine (13,759) automobiles were registered; that the total fees
amounts paid to said Commissioner of Motor Vehicles for said re
tration of said automobiles was forty-six thousand, seven hund
and sixty-three dollars ($46,763); that from May 1st, 1906, to
cember 31st, 1906, fifteen thousand two hundred and sixty-n
(15,269) persons were licensed to drive automobiles, and that
total fees or amounts paid to said Commissioner of Motor Vehi
for licensing said last named persons to drive automobiles, was twe
thousand two hundred and nine dollars ($20,209); that from M
1st, 1906, to December 31st, 1906, the total amount of fines collec
and received by said Commissioner of Motor Vehicles under and p
suant to said act of 1906, was nine hundred and ninety-one dol
($991); that the total amount for said fees for registration of a
mobiles, for said licensing said persons to drive automobiles, and
said fines, all being collected and received by the said C
18 missioner of Motor Vehicles from May 1st, 1906, to Decem
31st, 1906, was sixty-three thousand two hundred and twe
four dollars and ninety-one cents ($63,224.91); the sum of f
thousand seven hundred and thirty-eight dollars and nine c
($4,738.09) having been paid as fees to agents from May 1, 1906
December 31, 1906, pursuant to section 10 of said act of 19
whereby said total sum of sixty-three thousand two hundred
twenty-four dollars and ninety-one cents ($63,224.91), over

above said fees paid to agents as aforesaid, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act of 1906; that from May 1, 1906, to December 31st, 1906, the total costs and expenses of every kind incurred in enforcing, executing, carrying out and maintaining the provisions of said law of 1906, and for doing all work or business and providing all things and paying all expenses required therefor, was four thousand seven hundred and thirty-eight dollars and nine cents ($4,738.09); that the tabulated statement hereto annexed entitled "Recapitulation by months for 1906," marked No. 1, made a part of said stipulation, shows for each month from May to December inclusive for the year 1906, the number of automobiles registered under the column marked "Reg."; the amount of fees therefor under the column marked "Amt."; the number of persons licensed to drive automobiles under the column marked "Lic."; the amount of fees therefor under the next column marked "Amt."; the amount of fines under the column marked "Fines"; the total costs and expenses of every kind incurred as aforesaid, under the column marked "Amt. paid out," and the total amount collected and received by said Commissioner of Motor Vehicles and paid by him to the Treasurer of the State of New Jersey as aforesaid, under the column marked "Paid State Treasurer;" that from December 31st, 1906, to December 31st, 1907, under and pursuant to said act of 1906, seventeen thousand six hundred and nineteen (17,619) automobiles were registered; that the total fees or amounts paid to the Commissioner of Motor Vehicles for said registration of said automobiles was sixty-one thousand five hundred and ninety-four dollars and twenty-five cents ($61,594.25); that, from December 31st, 1906, to December 31st, 1907, eighteen thousand and eighty-five (18,085) persons were licensed to drive automobiles, and that the total fees or amounts paid to said Commissioner of Motor Vehicles for licensing said persons to drive automobiles, was twenty-five thousand five hundred and twenty-nine dollars ($25,529); that from December 31, 1906, to December 31, 1907, the total amount of fines collected and received by said Commissioner of Motor Vehicles under and pursuant to said act of 1906, was five thousand six hundred and forty dollars ($5,640); that the total amount of said fees for registration of automobiles, for said licensing said persons to drive automobiles, and the said fines, all being collected and received by the said Commissioner of Motor Vehicles from December 31, 1906, to December 31, 1907, was eighty-five thousand six hundred and ninety-four dollars and eighty-seven cents ($85,694.87), the sum of seven thousand and sixty-eight dollars and thirty-eight cents ($7,068.38) having been paid as fees to agents from December 31, 1906, to December 31, 1907, pursuant to said section 10, of said act of 1906, whereby said total sum of eighty-five thousand six hundred and ninety-four dollars and eighty-seven cents ($85,694.87) over and above said fees paid to agents, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act of 1906; that from December 31, 1906, to December 31, 1907, the total costs and expenses of every kind incurred in enforcing, exe-

19

cuting, carrying out and maintaining the provisions of said law
1906, and for doing all work or business and providing all thin
and paying all expenses required therefor, was twelve tho
20 sand four hundred and six dollars and eighty-two cents ($1
406.82) made up of the following items, viz:

Salary of Commissioner	$1,500.
Salary of Chief Inspector	1,500.
Compensation of Inspectors and their equipment	1,311.
Clerical service	4,513.
Expense and equipment of Inspectors	739.
Purchase of motor cycles	275.
Blanks and stationery	844.
Postage, expressage and other incidental expenses	1,722.
Total	$12,406.

that the tabulated statement hereto annexed entitled "Report
1907," marked No. 2, made a part of said stipulation, shows, for ea
month from December 31, 1906, to December 31, 1907, the numb
of automobiles registered under the column marked "Reg."; t
amount of fees therefor under the column marked "Amt."; the nu
ber of persons licensed to drive automobiles under the colu
marked "Lic."; the amount of fees therefor under the next colu
marked "Amt."; and the amount of fines under the column mark
"Fines"; the amount paid as fees to agents, pursuant to said Sec.
of said act under the column marked "Fees"; and the total amo
collected and received by said Commissioner of Motor Vehicles a
paid by him to the Treasurer of the State of New Jersey as afores
under the column marked "Total"; that from January 1st, 1908
May 1st, 1908, under and pursuant to said act of 1906 three thous
five hundred and fifteen (3,515) automobiles were registered; t
the total fees or amounts paid to the Commissioner of Motor Vehi
for said registration of said automobiles was fourteen thousand
fifty-six dollars ($14.056); that from January 1st, 1908, to May
1908, three thousand and eighty-six (3,086) persons were licen
to drive automobiles, and that the total fees or amou
21 paid to said Commissioner of Motor Vehicles for licens
said persons to drive automobiles, was five thousand th
hundred and fifty-nine dollars ($5,359); that from Jan. 1st, 19
to May 1st, 1908, the total amount of fines collected and received
said Commissioner of Motor Vehicles under and pursuant to
Act of 1906, was Seven Hundred and eighty-five dollars ($78
that the total amount for said fees for registration of automobiles,
said licensing said persons to drive automobiles and the said fines,
being collected and received by said Commissioner of Motor Vehi
from Jan. 1st, 1908, to May 1st, 1908, was Eighteen Thousand,
Hundred and Ninety-one Dollars and fifty-three cents ($18,291.5
the sum of One Thousand eight hundred and eight dollars and fi
seven cents ($1,808.57) having been paid as fees, to agents from J
1st, 1908, to May 1st, 1908, pursuant to said section 10 of said
of 1906, whereby said total sum of eighteen thousand, two hund

and ninety-one dollars and fifty-three cents ($18,291.53) over and above said fees paid to agents as aforesaid, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act of 1906; that, from Jan. 1st, 1908, to May 1st, 1908, the total costs and expenses of every kind incurred in enforcing, executing, carrying out and maintaining the provisions of said act of 1906, and for doing all work or business, providing all things and paying all expenses required therefor, was Four Thousand Three Hundred and Forty-Five Dollars and ninety-eight cents ($4,345.98), made up of the following items, viz:—

Commissioner's Salary	$500.00
Chief Inspector's Salary	500.00
Inspector's Expenses	212.35
Inspector's Salary	525.00
Clerical	1,341.83
Expressage, Postage, etc.	488.90
Stationery	564.75
22 Expense of Equipment	213.15
Total	$4,345.98

that the tabulated statement hereto annexed marked No. 3, made a part of said stipulation, shows under column marked "Year" successively the part of the year of 1906, from May 1st, 1906, to Dec. 31st, 1906, inclusive; the total year of 1907; the period from Jan. 1, 1908, to May 1, 1908; and from May 1, 1908, to Oct. 1, 1908; under the column marked "Reg." is shown the total number of automobiles registered for the period opposite the same; under the column marked "Amt." is shown the total amount of fees for registration of automobiles for the period opposite the same; under the column marked "Lic." is shown the total number of persons licensed to drive for the period opposite the same; under the next column marked "Amt." is shown the total amount of such fees for licensing persons to drive for the period opposite the same; under column marked "Fines" is shown the amount of fines collected under said act, for the period opposite the same; under the column marked "Ex. Fees" is shown the amount of fees of agents under said section 10 of said act, for the period opposite the same, and under the column marked "Paid to Treasurer" is shown the total amount collected and received by the said Commissioner of Motor Vehicles and paid by him to the Treasurer of New Jersey, over and above said fees paid to agents, pursuant to said section 10 of said act, for the period opposite the same; that the tabulated statement hereto annexed marked No. 4 made a part of said stipulation, shows the items of said total costs and expenses of every kind incurred in enforcing, executing, carrying out and managing the provisions of said act and amendment, and for doing all work or business and providing all things and paying all expenses required therefor, for the periods of time from Jan. 1st, 1908, to May 1st, 1908, and from May 1st, 1908, to October 1st, 1908; that the said costs and expenses
23 of every kind incurred in enforcing, executing, carrying out and managing the provisions of said act and for doing all

work or business and providing all things and paying all expenses required therefor, before and since said amendment, has always been and is about equally incurred and applied in the department of registration of automobiles and that of licensing of drivers thereof; that His Excellency, John Franklin Fort, the Governor of New Jersey, in his inaugural address to the Senate and General Assembly of New Jersey, constituting the Legislature of New Jersey, delivered, at the opening session of said Legislature in January, nineteen hundred and eight, did among other things address said Legislature as follows:

"At the present time the motor vehicle laws are administered in connection with the office of the Secretary of State.

"The use of these machines is becoming so general, the number of them is so great (the licenses exceeding twenty-five thousand), and the revenue under a changed license system would be so large, that this should be a department by itself.

"The enforcement of the automobile laws is demanded by the traveling public. A very large percentage of the automobile drivers are careful, but there are some who are not.

"If the present automobile law is too stringent it should be amended. A speed of twenty miles an hour in many places is not excessive; in fact, it may be said to be quite moderate, without misstating the truth; while, in other places, a speed of twelve miles an hour is more rapid than these machines should be permitted to go. But whatever the law may be it should be enforced.

"There should be sufficient officials in the Department of Motor Vehicles to see that it is enforced, and the penalty for the violation of the law should be more severe.

"The returns from this department, on the basis of an
24 increased license fee, would give it as large a revenue as is derived from any other department of the State, and I should not be surprised if the revenue, within a year, on a reasonable horse-power license fee, would exceed three hundred thousand dollars. The expense of conducting this department probably would not reach five per cent of the entire revenue received, and its efficiency, under a commissioner, could be made very much greater than at present.

"New Jersey has the finest roads of any State in the Union, and, in proportion to her territory, more than any other State. We must do everything to increase the number of miles of these admirable public highways, and to maintain them after they are constructed; and this department, properly managed, will be a most efficient aid in securing the revenue by which the State Road Commissioner can maintain these roads in good repair. * * *

"The policy of the State as to State aid for public roads should be continued, and I am in favor of its enlargement in so far as is possible, consistent with the financial condition of the State and the proper conserving of the other public interests.

"The public roads of the State that have been built assisted by State aid, were built for carriages and bicycles, light trucking and travel of that character. But there has come into the travel of the day the automobile, with its great weight and tremendous power

and the effect upon our public roads has not been good; on the other hand, it has been distinctly injurious. At the rate of speed at which these heavy machines travel, they tear up and destroy the surface of the highways, and something should be done either to protect the surface of the highways by some substantial covering, or a much larger license fee should be charged for the right to operate these machines, to cover the costs of repairs.

"If the license fee method is adopted, then it should be graded on the basis of the horsepower of the machine operated.

"It would seem as if we should get from the automobile owners a revenue of about two hundred and fifty thousand dollars per year, and this entire revenue should be devoted to the repair, or the aiding in the repair of the public highways of the State, the building of which has been assisted by State aid.

"This tax need not be a heavy one upon auto-machines, and the drivers of these machines are quite as anxious for the preservation of the public highways by the keeping of them in repair, as the rest of the traveling public, and they will not object to a reasonable license fee, fixed upon the basis of the horsepower of the machine operated.

"The fees derived from this license revenue should, as at present, be turned into the State Treasury, to be used under the direction of the State Road Department in the making of such repairs, and should be administered along the lines, and with the same care, which that department now exercises in road construction."

And the said Frank J. Kane, having submitted and urged at said trial upon the said facts so admitted and found as aforesaid, the following propositions, attacking the constitutionality of said act, and amendment thereto, viz:

First. That the acts of the New Jersey Legislature for the violation of which this action is brought, being entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," approved April 12th, 1906, and the amendment of said act approved April 16th, 1908, violate Article IV, Section VII, paragraph 12, of the Constitution of the State of New Jersey, which ordains, that "Property shall be assessed for taxes under general laws, and by uniform rules according to its true value."

The fee or sum imposed and required by section 16 of said act of 1906 as amended by said act of 1908, which is required before the owner of automobiles can drive or use them on the public highways of New Jersey, is in substance and effect a tax upon property. Under said act and amendment the imposition of said tax upon automobiles is regulated as to the amount of tax, according to the horsepower of automobiles, and not according to their true value. Moreover, by the said act and amendment the said tax is placed

upon automobiles only, and is not placed upon other personal property, whose situs for taxation is in New Jersey; by reason whereof, said tax so imposed by said act and amendment is a taxation of property not by uniform rules, as required by said provision of said Constitution.

Moreover, said automobiles are so taxed by said act and amendment as aforesaid, although such tax is not imposed upon other personal property naturally belonging to the same class, such as wagons and other vehicles used upon the highways, whereby, under said act and amendment, said tax is arbitrary, unjust, and discriminatory, in making automobiles a class for said taxation and excluding therefrom other property of the same or similar nature.

The said automobiles so taxed by said act and amendment whose situs for taxation is in New Jersey are also taxed and taxable under the general laws of New Jersey, whereby the owners of automobiles if required to pay said tax and burden imposed by said act of 1906 and amendment of 1908 are subjected to double taxation thereto, which is an unjust and illegal taxation.

Second. The said act of 1906 and amendment of 1908 by imposing said tax and burden upon the automobile of defendant who was a resident of New York, and whose automobile was not
27 located in New Jersey, or liable to be taxed by said State as personal property, violates Article 1, Section 8, of the Constitution of the United States, which gives to the Congress power to regulate commerce among the several States. The defendant contends, that the requirement of the payment of said fee for the registration of defendant's automobile by said act of 1906 and its amendment of 1908, before said defendant may drive or use the same upon the highways of New Jersey, is a burden and tax upon Interstate Commerce in violation of the constitution and laws of the United States regulating Interstate Commerce passed by the Congress of the United States; and that the Legislature of New Jersey had no power or authority to enact said act of 1906 and amendment of 1908 which imposes such tax and burden on Interstate Commerce and the Commerce and Intercourse of this defendant in the State of New Jersey in going from the State of New York and through the State of New Jersey, to and into the State of Pennsylvania.

Third. The said act of 1906 and amendment thereto of 1908, in requiring the payment of said fee for registration of defendant's said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, violates the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides, that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The defendant contends, that the above provision of the Federal Constitution is violated, in that the said act of 1906 and amendment thereto of 1908 by requiring from defendant the said fee for the

registration of his said automobile and the registration
28 thereof, as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is an unjust, and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

Fourth. That said act of 1906 and amendment thereto of 1908, in providing that every owner having a residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, constituting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section Sixteen of said act of 1906 as amended in said act of 1908, violates the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth in that the said requirement of said act of 1906 as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey, without being required to file said instrument with the Secretary of State, and without being subject to said requirements provided in said sixteen section of said act of 1906 as amended by the amendment thereto of 1908, as above set forth. This defendant contends, that there is no natural or just basis for classification in thus making such requirements of non-residents and
29 not making the same requirement of residents of New Jersey, and that said act of 1906, and amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as resident of New York in favor of residents of New Jersey, and violates said provision of the Fourteenth amendment.

Fifth. The avidence shows, that the said fees required and collected for registration of automobiles by the said act of 1906 and amendment thereto, greatly exceeds all costs and expenses necessary or applicable for the execution and carrying out of the provisions of said act as an exercise of the Police Power of the State; and that the fees required and collected thereby for licensing drivers of automobiles greatly exceed all such costs and expenses necessary or applicable for the execution and carrying out of said provisions of said acts as an exercise of the Police Power of the State.

Wherefore, this defendant contends, that said fees or sums required are a burden imposed for revenue and in substance and effect a tax upon property, and thereby opposed to the Constitution of New Jersey requiring that property shall be assessed for taxes under general laws, and by uniform rules, and according to its true value,

and being such a tax is also a burden upon Interstate Commerce in violation of said Interstate Commerce clause in the Federal Constitution and is discriminatory against owners of automobiles in favor of owners of other property of substantially the same kind, in violation of said Fourteenth Amendment to the Federal Constitution."

The above Court hereby holds and adjudges, that said propositions so submitted were unsound and untenable upon said facts so admitted and found as aforesaid, and that said act of 1906 and amendment thereto were not in any respect in violation of the Constitution of the State of New Jersey or the Constitution of the United
30 States, but were in every respect constitutional and valid, upon said facts so admitted and found herein as aforesaid.

Wherefore, said Court does hereby adjudge and decide and find that all the said facts stipulated and set forth as aforesaid are true, and does hereby adjudge and decide under said facts so admitted and found herein, as aforesaid, that on the fifth day of October, nineteen hundred and eight, said Frank J. Kane, then a resident of Woodhaven, Long Island, in the State of New York, did drive his automobile which was of thirty horsepower in the State of New Jersey and use his automobile on the public highways of said State of New Jersey by driving and using his said automobile upon said public highways from Fort Lee in the County of Bergen, in the State of New Jersey to, and upon a public highway in the City of Paterson in the County of Passaic and State of New Jersey, known and designated as Washington Street, in transit to Delaware Water Gap as aforesaid, without having registered his said automobile, or applied to register the same, or paid the fee required therefor, or obtained any certificate or license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his true and lawful attorney upon whom all original process in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey, against him may be served, and therein agreeing that any original process against him shall be of the same force and effect as if served on him within this state, in violation of the Fifteenth and Sixteenth Sections of an Act of the Legislature of the State of New Jersey, entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; pre-
scribing and regulating process and the service thereof and
31 proceedings for the violation of the provisions of the act and penalties for said violations," and approved April 12th, 1906, and the amendment of said Act entitled "An Act to amend an act entitled 'An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations,' approved April 16, 1908"; and the said Frank J. Kane is by the above

Court as aforesaid, convicted of having violated said Fifteenth and Sixteenth Sections of said act of 1906 and amendment thereto as aforesaid, within the intent and meaning thereof; and it is adjudged that he, the said Frank J. Kane, shall pay a fine of five dollars, for the violation of said Fifteenth and Sixteenth Sections of said act and amendment thereto, which said fine shall be accounted for and paid and forwarded to the Commissioner of Motor Vehicles as provided by said Act and Amendment thereto.

Given under my hand and seal at the City of Paterson in the county aforesaid this twenty-sixth day of October, nineteen hundred and eight.

[SEAL.] (Signed) JAMES F. CARROLL,
Recorder of the City of Paterson, N. J.

No. 1.

For month of—	Reg.	Amt.	Lic.	Amt.	Fines.	Amt. paid out.	Paid State Treasurer.
May	2,434	8,739.00	1,881	2,526.00	...	329.83	10,935.17
June	4,185	14,677.00	4,542	5,831.00	...	719.33	19,788.67
July	3,227	10,469.00	4,390	5,798.00	...	1,019.08	15,247.92
Aug.	1,314	4,398.00	1,614	2,145.00	585	612.33	6,515.67
Sept.	938	2,984.00	1,119	1,524.00	95	616.58	3,986.42
Oct.	754	2,457.00	800	1,066.00	156	481.58	3,197.42
Nov.	583	1,963.00	582	865.00	100	518.78	2,408.22
Dec.	324	1,076.00	341	454.00	55	440.58	1,144.42
	13,759	46,763.00	15,269	20,209.90	991	4,738.09	63,224.91

33 *Report for* 1907.

No. 2.

For month of—	Reg.	Amt.	Lic.	Amt.	Fines.	Fees paid out.	Total.
Jan.	283	1,121.00	212	329	111.00	367.83	1,193.17
Feb.	203	786.00	156	227	445.52	366.68	1,092.42
March	775	2,849.00	577	836	300.00	443.58	3,250.92
Apr.	1,531	5,166.00	1,206	1,757	334.00	519.58	6,737.42

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June	3,246	11,157.25	3,294	4,579	560.50	836.58	15,406.17
July	4,111	13,975.00	4,904	6,726	1,661.70	1,103.33	21,259.37
Aug.	1,874	6,221.00	2,205	3,050	789.00	686.33	9,373.67
Sept.	1,138	3,868.00	1,236	1,731	496.00	589.23	5,505.67
Oct.	1,040	3,676.00	1,048	1,633	500.80	560.33	5,249.47
Nov.	617	2,301.00	664	970	105.00	483.25	2,892.75
Dec.	318	1,167.00	308	446	391.00	385.58	1,618.42
	17,619	61,594.25	10,085	25,529	5,930.50	7,068.38	85,694.87

Less Drafts drawn by Township of So. Orange, returned unpaid—

Fines	290.50
	5,640.00

34 No. 3.

Year.	Reg.	Amt.	Lic.	Amt.	Fines.	Ex. fees.	Paid to treasurer.
1906	13,759	46,763.00	15,269	20,209	991.00	4,738.09	63,224.91
1907	17,619	61,594.25	18,085	25,529	5,640.00	7,068.38	85,694.87
1908 Jan. 1 to May 1.	3,515	14,058.00	3,086	5,359	785.00	1,808.57	18,391.53
May 1 to Oct. 1.	14,100	83,438.00	13,967	38,250	4,785.50	5,337.32	121,236.28

ND CLOSE IN CENTER

35 No. 4.

	Jan. 1 to May 1, 1908.	May 1 to Oct. 1.
Commissioner's Salary	$500.00	$625.0
Chief Inspector's Salary	500.00	635.0
Inspector's Expenses	212.35	1,046.0
Inspector's Salary	525.00	2,955.0
Clerical	1,341.83	3,321.2
Expressage, Postage, etc.	488.90	1,646.5
Stationery	564.75	921.1
Expense of Equipment	213.15	1,046.0
Markers	.....	8,818.2
Purchase of Motor Cycle and Expenses	.....	1,776.7
	$4,345.98	$22,781.0

36 Recorder's Court of the City of Paterson, in the State of New Jersey.

THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor,
vs.
FRANK J. KANE, Defendant.

Stipulation upon Facts.

The above action having been set for trial by the above Court and the above parties, prosecutor and defendant, being desirous o avoiding the unnecessary trouble and expense of producing witnesse and records or documents of the facts involved in said action befor the above Court, said records or documents being records or docu ments in the office of the Secretary of State at Trenton, New Jersey not removable therefrom without public inconvenience and detri ment.

It is hereby stipulated and agreed by and between the prosecuto and defendant in the above stated cause, by their respective Attor neys, that the facts hereinafter stated are admitted to be true, an shall be taken and received by the above court on the trial of th above action as true in the same manner and to the same extent a if the said facts had been proven by the evidence of witnesses an documents or records produced and admitted in said Court; the sai prosecutor above named, however, reserving the right to object to th relevancy or materiality of said facts contained in said records o documents; said facts herein and hereby stipulated to be true a aforesaid are as follows, to wit:

That on the fifth day of October, A. D. nineteen hundred an eight, Frank J. Kane, the above named defendant, was

37 resident of Woodhaven, Long Island,, in the State of Ne York; that being such resident of Woodhaven, aforesaid, o said last named day, said Frank J. Kane did drive his automobil which was of thirty horse power, in the State of New Jersey, and us

his said automobile on the public highways of said State of New Jersey by driving and using his said automobile upon said public highways from Fort Lee in the County of Bergen in the State of New Jersey, to, and upon a public highway in the City of Paterson, in the County of Passaic and State of New Jersey, known and designated as Washington Street, without having registered his said automobile, or applied to register the same, or paid the fee required therefor, or obtained any certificate, or license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his true and lawful Attorney upon whom all original process in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey, against him may be served, and therein agreeing that any original process against him shall be of the same force and effect as if served on him within this State, as required and provided for in the Fifteenth and Sixteenth Sections of an act of the Legislature of the State of New Jersey, entitled "An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," and approved April 12th, 1906, and the amendment of said Act entitled "An act to amend an act entitled 'An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regu-
38 lating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations,' approved April 16, 1908"; that said Frank J. Kane when on Washington Street in the City of Paterson as aforesaid, was then going on his way and driving and using his said automobile upon the highways of New Jersey in going from the said City of Paterson to the Delaware Water Gap in the State of Pennsylvania, having come from Fort Lee as aforesaid, and having reached said City of Paterson as aforesaid, and while upon said Washington Street on his way to said Delaware Water Gap as aforesaid, the said Frank J. Kane was arrested and apprehended upon the complaint made and the warrant issued in the above action; that at the time of said arrest and theretofore as aforesaid, said Frank J. Kane was and had been the owner of said automobile, and kept the same with his other property at his stable or automobile building in Long Island as aforesaid permanently, except at such times as said Frank J. Kane transiently drove said automobile upon the highways, and that at the time of his arrest as aforesaid he was driving and using his said automobile upon the highways of New Jersey, only in transit from Fort Lee to the Delaware Water Gap as aforesaid; that at the time of his said arrest the said Frank J. Kane was duly licensed to drive an automobile of thirty horse power and greater than thirty horse power, upon any public highway in the State of New Jersey, whereby he was licensed

to drive an automobile of the power and kind of his said automobile which was of thirty horse power, upon any public highway in the State of New Jersey, the said Frank J. Kane having been duly licensed to so drive, having fulfilled all requirements and conditions in accordance with the Seventeenth Section of said act and amendment thereof; that the said amendment of said act took effect April 16th, 1908; that a small number of automobiles were registered and a small number of persons licensed to drive automobiles dur-
39 ing the time from April 16th, 1908, until May 1, 1908, which are not herein stated; that from May 1st, 1908, until October 1st, 1908, under and pursuant to said amendment of said act, fourteen thousand and one hundred (14,100) automobiles were registered; that the total fees or amounts paid to the Commissioner of Motor Vehicles for said registration of automobiles was eighty-three thousand four hundred and thirty-eight dollars ($83,438); that from May 1, 1908, until October 1, 1908, thirteen thousand nine hundred and sixty-seven (13,967) persons were licensed to drive automobiles, and that the total fees or amounts paid to said Commissioner of Motor Vehicles for licensing said persons to drive automobiles was thirty-eight thousand two hundred and fifty dollars ($38,250); that from May 1st, 1908 to October 1st, 1908, the total amount of fines collected and received by said Commissioner of Motor Vehicles under and pursuant to said amended act was four thousand seven hundred and eighty-five dollars and fifty cents ($4,785.50); that the total amount for said fees for registration of automobiles, for said licensing said persons to drive automobiles and the said fines, all being collected and received by the said Commissioner of Motor Vehicles from May 1, 1908, to October 1, 1908, was one hundred and twenty-one thousand two hundred and thirty-six dollars and twenty-eight cents ($121,236.28); the sum of five thousand three hundred and thirty-seven dollars and thirty-two cents ($5,337.32) having been paid as fees to agents from May 1st, 1908 to October 1st, 1908, pursuant to Section 10 of said act of 1908 whereby said total sum of one hundred and twenty-one thousand two hundred and thirty-six dollars and twenty-eight cents ($121,236.28) over and above said fees paid to agents as aforesaid, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act and amendment; that from May 1, 1908 to October 1st, 1908, the total cost and expense of every kind incurred in enforcing, executing, carrying out
40 and maintaining the provisions of said act and amendment and for doing all work or business and providing all things and paying all expenses required therefor, was twenty-two thousand seven hundred and eighty-one dollars and one cent ($22,781.01) made up of the following items, viz:

Commissioner's salary	$625.0
Chief Inspector's salary	625.0
Markers	8,818.2
Purchase of Motorcycle and expenses	1,776.7
Total	$22,781.0

that under and pursuant to said act of 1906, from May 1st, 1906, to December 31st, 1906, thirteen thousand seven hundred and fifty-nine (13,759) automobiles were registered; that the total fees or amounts paid to said Commissioner of Motor Vehicles for said registration of said automobiles was forty-six thousand, seven hundred and sixty-three dollars ($46,763); that from May 1st, 1906, to December 31st, 1906, fifteen thousand two hundred and sixty-nine (15,269) persons were licensed to drive automobiles, and that the total fees or amounts paid to said Commissioner of Motor Vehicles for licensing said last named persons to drive automobiles, was twenty-thousand two hundred and nine dollars ($20,209); that from May 1st, 1906, to December 31st, 1906, the total amount of fines collected and received by said Commissioner of Motor Vehicles under and pursuant to said act of 1906, was nine hundred and ninety-one dollars ($991); that the total amount for said fees for registration of automobiles, for said licensing said persons to drive automobiles, and the said fines, all being collected and received by the said Commissioner of Motor Vehicles from May 1st, 1906, to December 31st, 1906, was sixty-three thousand two hundred and twenty-four dollars and ninety-one cents ($63,224.91); the sum of four thousand seven hundred and thirty-eight dollars and nine cents ($4,-
41 738.09) having been paid as fees to agents from May 1, 1906, to December 31, 1906, pursuant to section 10 of said act of 1906, whereby said total sum of sixty-three thousand two hundred and twenty-four dollars and ninety-one cents ($63,224.91), over and above said fees paid to agents as aforesaid, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act of 1906; that from May 1, 1906, to December 31st, 1906, the total costs and expenses of every kind incurred in enforcing, executing, carrying out and maintaining the provisions of said law of 1906, and for doing all work or business and providing all things and paying all expenses required therefor, was four thousand seven hundred and thirty-eight dollars and nine cents ($4,-738.09); that the tabulated statement hereto annexed entitled "Recapitulation by months for 1906," marked No. 1, is made a part of this stipulation, and shows for each month from May to December inclusive for the year 1906, the number of automobiles registered under the column marked "Reg."; the amount of fees therefor under the column marked "Amt."; the number of persons licensed to drive automobiles under the column marked "Lic."; the amount of fees therefor under the next column marked "Amt."; the amount of fines under the column marked "Fines;" the total costs and expenses of every kind incurred as aforesaid, under the column marked "Amt. paid out," and the total amount collected and received by said Commissioner of Motor Vehicles and paid by him to the Treasurer of the State of New Jersey as aforesaid, under the column marked "Paid State Treasurer"; that from December 31st, 1906, to December 31st, 1907, under and pursuant to said act of 1906, seventeen thousand six hundred and nineteen (17,619) automobiles were registered; that the total fees or amounts paid to the Commissioner of Motor Vehicles for said registration of said automobiles was sixty-

a part of this stipulation, and shows under column ma
45 "Year" successively the part of the year 1906, from May
1906, to Dec. 31st, 1906, inclusive; the total year of 1
the period from Jan. 1, 1908, to May 1, 1908; and from Ma
1908, to Oct. 1, 1908; under the column marked "Reg." is sh
the total number of automobiles registered for the period opp
the same; under the column marked "Amt." is shown the
amount of fees for registration of automobiles for the period opp
the same; under the column marked "Lic." is shown the total n
ber of persons licensed to drive for the period opposite the s
under the next column marked "Amt." is shown the total amou
such fees for licensing persons to drive for the period opposite
same; under column marked "Fines" is shown the amount of
collected under said act for the period opposite the same; under
column marked "Ex. Fees" is shown the amount of fees of ag
under said section 10 of said act, for the period opposite the s
and under the column marked "Paid to Treasurer" is shown
total amount collected and received by the said Commissione
Motor Vehicles and paid by him to the Treasurer of New Jersey,
and above said fees paid to agents, pursuant to said section 1
said act, for the period opposite the same; that the tabulated s
ment hereto annexed marked No. 4, is made a part of this stipula
and shows the items of said total costs and expenses of every
incurred in enforcing, executing, carrying out and managing
provisions of said act and amendment, and for doing all wor
business and providing all things and paying all expenses requ
therefor, for the periods of time from Jan. 1st, 1908, to May
1908, and from May 1st, 1908, to October 1st, 1908; that the
costs and expenses of every kind incurred in enforcing, execut
carrying out and managing the provisions of said act and for d
all work or business and providing all things and payin
46 expenses required therefor, before and since said amendm
has always been and is about equally incurred and app
in the department of registration of automobiles and that of lic
ing of drivers thereof; and further the fact is agreed to as afore
that His Excellency, John Franklin Fort, the Governor of
Jersey, in his inaugural address to the Senate and General Asse
of New Jersey, constituting the Legislature of New Jersey, delive
at the opening session of said Legislature in January, nineteen
dred and eight, did among other things address said Legislatu
follows:

"At the present time the motor vehicle laws are administere
connection with the office of the Secretary of State.

"The use of these machines is becoming so general, the nu
of them is so great (the license exceeding twenty-five thousand),
the revenue under a changed license system would be so large,
this should be a department by itself.

"The enforcement of the automobile laws is demanded by
traveling public. A very large percentage of the automobile dri
are careful, but there are some who are not.

"If the present automobile law is too stringent it should

amended. A speed of twenty miles an hour in many places is not excessive; in fact, it may be said to be quite moderate, without misstating the truth; while, in other places, a speed of twelve miles an hour is more rapid than these machines should be permitted to go. But whatever the law may be it should be enforced.

"There should be sufficient officials in the Department of Motor Vehicles to see that it is enforced, and the penalty for the violation of the law should be more severe.

"The returns from this department, on the basis of an increased license fee, would give it as large a revenue as is derived from any other department of the State, and I should not be surprised
47 if the revenue, within a year, on a reasonable horsepower license fee, would exceed three hundred thousand dollars. The expense of conducting this department probably would not reach five per cent. of the entire revenue received, and its efficiency, under a commissioner, could be made very much greater than at present.

"New Jersey has the finest roads of any State in the Union, and, in proportion to her territory, more than any other State. We must do everything to increase the number of miles of these admirable public highways, and to maintain them after they are constructed; and this department, properly managed, will be a most efficient aid in securing the revenue by which the State Road Commissioner can maintain these roads in good repair. * * *

"The policy of the State as to State aid for public roads should be continued, and I am in favor of its enlargement in so far as is possible, consistent with the financial condition of the State and the proper conserving of the other public interests.

"The public roads of the State that have been built, assisted by State aid, were built for carriages and bicycles, light trucking and travel of that character. But there has come into the travel of the day the automobile, with its great weight and tremendous power, and the effect upon our public roads has not been good; on the other hand, it has been distinctly injurious. At the rate of speed at which these heavy machines travel, they tear up and destroy the surface of the highways and something should be done either to protect the surface of the highway by some substantial covering, or a much larger license fee should be charged for the right to operate these machines, to cover the costs of repairs.

"If the license fee method is adopted, then it should be graded on the basis of the horsepower of the machine operated.

"It would seem as if we should get from the automobile owners a revenue of about two hundred and fifty thousand dollars per
48 year, and this entire revenue should be devoted to the repair, or the aiding in the repair of the public highways of the State, the building of which has been assisted by State aid.

"This tax need not be a heavy one upon auto-machines, and the drivers of these machines are quite as anxious for the preservation of the public highways by the keeping of them in repair, as the rest of the traveling public, and they will not object to a reasonable li-

cense fee, fixed upon the basis of the horsepower of the machine operated.

"The fees derived from this license revenue should, as at present, be turned into the State Treasury, to be used under the direction of the State Road Department in the making of such repairs, and should be administered along the lines, and with the same care, which that department now exercises in road construction."

Dated Oct. 26, 1908.

ROBERT H. McCARTER,
Attorney General, for Prosecutor.
GRIGGS & HARDING,
Attorneys for Defendant.

No. 1.

For month of—	Reg.	Amt.	Lic.	Amt.	Fines.	Amt. paid out.	Paid State Treasurer.
May	2,434	8,739.00	1,881	2,526.00	...	329.83	10,935.17
June	4,185	14,677.00	4,542	5,831.00	...	719.33	19,788.67
July	3,227	10,469.00	4,390	5,798.00	...	1,019.08	15,247.92
Aug.	1,314	4,398.00	1,614	2,145.00	585	612.33	6,515.67
Sept.	938	2,984.00	1,119	1,524.00	95	616.58	3,986.42
Oct.	754	2,457.00	800	1,066.00	156	481.58	3,197.42
Nov.	583	1,963.00	582	865.00	100	518.78	2,408.22
Dec.	324	1,076.00	341	454.00	55	440.58	1,144.42
	13,759	46,763.00	15,269	20,209.00	991	4,738.09	63,224.91

No. 2.

For month of—	Reg.	Amt.	Lic.	Amt.	Fines.	Fees, paid out.	Total.
Jan.	283	1,121.00	212	329	111.00	367.83	1,193.17
Feb.	203	786.00	156	227	445.52	366.68	1,092.42
March	775	2,849.00	577	836	300.00	443.58	3,250.92
Apr.	1,531	5,166.00	1,206	1,757	334.00	519.58	6,737.42
May	2,661	9,307.00	2,275	3,245	236.00	726.58	12,061.42
June	3,246	11,157.25	3,294	4,579	560.50	836.58	15,406.17
July	4,111	13,975.00	4,904	6,726	1,661.70	1,103.33	21,259.37
Aug.	1,874	6,221.00	2,205	3,050	789.00	686.33	9,373.67
Sept.	1,138	3,868.00	1,236	1,731	496.00	589.23	5,505.67
Oct.	1,040	3,676.00	1,048	1,633	500.80	560.33	5,249.47
Nov.	617	2,301.00	654	970	105.00	483.25	2,892.75
Dec.	318	1,167.00	308	446	391.00	385.58	1,618.42
	17,619	61,594.25	10,085	25,529	5,930.50	7,068.38	85,694.87
Less Drafts drawn by Township of So. Orange, returned unpaid— Fines					290.50		
					5,640.00		

51

No. 3.

Year.	Reg.	Amt.	Lic.	Amt.	Fines.	Ex. fees.	Paid to treasurer.
1906	13,759	46,763.00	15,269	20,209	991.00	4,738.09	63,224.91
1907	17,619	61,594.25	18,085	25,529	5,640.00	7,068.38	85,694.87
1908—Jan. 1 to May 1	3,515	14,058.00	3,086	5,359	785.00	1,808.57	18,391.53
May 1 to Oct 1	14,100	83,438.00	13,967	38,250	4,785.50	5,337.32	121,236.28

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52 No. 4.

	Jan. 1 to May 1, 1908.	May 1 to Oct. 1.
Commissioner's Salary	$500.00	$625.00
Chief Inspector's Salary	500.00	635.00
Inspector's Expenses	212.35	1,046.08
Inspector's Salary	525.00	2,955.00
Clerical	1,341.83	3,321.29
Expressage, Postage, etc.	488.90	1,646.54
Stationery	564.75	921.12
Expense of Equipment	213.15	1,046.08
Markers	.....	8,818.20
Purchase of Motor Cycle and exp'n's	.....	1,776.70
	$4,345.98	$22,781.01

53 Recorder's Court of the City of Paterson, in the State of New Jersey.

THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor,
vs.
FRANK J. KANE, Defendant.

Defendant's Propositions.

Frank J. Kane, the defendant in the above named action, submits herein to the above court the following propositions:

First. That the acts of the New Jersey Legislature for the violation of which this action is brought, being entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," approved April 12th, 1906, and the amendment of said act approved April 16th, 1908, violate Article IV, Section VII, paragraph 12, of the Constitution of the State of New Jersey, which ordains, that "Property shall be assessed for taxes under general laws, and by uniform rules according to its true value."

The fee or sum imposed and required by Section 16 of said act of 1906 as amended by said act of 1908, which is required before the owner of automobiles can drive or use them on the public highways of New Jersey, is in substance and effect a tax upon property.

54 Under said act and amendment the imposition of said tax upon automobiles is regulated as to the amount of tax, according to the horsepower of automobiles, and not according to their true value. Moreover, by the said act and amendment the said tax is placed upon automobiles only, and is not placed upon other personal property, whose situs for taxation is in New Jersey; by

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reason whereof, said tax so imposed by said act and amendment is
taxation of property not by uniform rules, as required by said pro
vision of said Constitution.

Moreover, said automobiles are so taxed by said act and amend
ment as aforesaid, although such tax is not imposed upon othe
personal property naturally belonging to the same class, such a
wagons and other vehicles used upon the highways, whereby, unde
said act and amendment, said tax is arbitrary, unjust, and discrimi
natory, in making automobiles a class for said taxation and exclud
ing therefrom other property of the same or similar nature.

The said automobiles so taxed by said act and amendment whos
situs for taxation is in New Jersey are also taxed and taxable unde
the general tax laws of New Jersey, whereby the owners of aut
mobiles if required to pay said tax and burden imposed by said a
of 1906 and amendment of 1908 are subjected to double taxatio
thereon, which is an unjust and illegal taxation.

Second. The said act of 1906 and amendment of 1908 by in
posing said tax and burden upon the automobile of defendant wh
was a resident of New York, and whose automobile was not locate
in New Jersey, or liable to be taxed by said State as personal pro
erty, violates Article 1, Section 8, of the Constitution of the Unit
States, which gives to the Congress power to regulate commer
among the several States. The defendant contends, that the
quirement of the payment of said fee for the registration
55 defendant's automobile by said act of 1906 and its amen
ment of 1908, before said defendant may drive or use t
same upon the highways of New Jersey, is a burden and tax up
Interstate Commerce, in violation of the Constitution and laws
the United States regulating Interstate Commerce passed by t
Congress of the United States; and that the Legislature of N
Jersey had no power or authority to enact said act of 1906 a
amendment of 1908 which imposes such tax and burden on Int
state Commerce and the Commerce and Intercourse of this defe
ant in the State of New Jersey in going from the State of New Yo
into and through the State of New Jersey, to and into the State
Pennsylvania.

Third. The said act of 1906 and amendment thereto of 19
in requiring the payment of said fee for registration of defenda
said automobile and the registration thereof, before permitting
fendant to drive or use the same upon the public highways of N
Jersey, violates the Fourteenth Amendment of the Constitution of
United States, the first section of which amendment provides, t
"No State shall make or enforce any law which shall abridge
privileges or immunities of citizens of the United States, nor shall
State deprive any person of life, liberty or property, without due
cess of law, nor deny to any person within its jurisdiction the e
protection of the law."

The defendant contends, that the above provision of the Fed
Constitution is violated, in that the said act of 1906 and am
ment thereto of 1908 by requiring from defendant the said fe
the registration of his said automobile and the registration the

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as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is an unjust, and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

58 Fourth. The said act of 1906 and amendment thereto of 1908, in providing that every owner having a residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, constituting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section Sixteen of said act of 1906 as amended in said act of 1908, violates the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth, in that the said requirement of said act of 1906 as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey, without being required to file said instrument with the Secretary of State, and without being subject to said requirements provided in said sixteenth section of said act of 1906 as amended by the amendment thereto of 1908, as above set forth. This defendant contends that there is no natural or just basis for classification in thus making such requirements of non-residents and not making the same requirement of residents of New Jersey, and that said act of 1906, and amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as resident of New York in favor of residents of New Jersey, and violates said provision of the Fourteenth amendment.

Fifth. The evidence shows, that the said fees required and collected for registration of automobiles by the said act of 1906
57 and amendment thereto, greatly exceeds all costs and expenses necessary or applicable for the execution and carrying out of the provisions of said acts as an exercise of the Police Power of the State; and that the fees required and collected thereby for licensing drivers of automobiles greatly exceed all such costs and expenses necessary or applicable for the execution and carrying out of said provisions of said acts as an exercise of the Police Power of the State.

Wherefore, this defendant contends, that said fees or sums required are a burden imposed for revenue and in substance and effect a tax upon property, and thereby opposed to the Constitution of New Jersey requiring that property shall be assessed for taxes under general laws, and by uniform rules, and according to its true value, and

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being such a tax is also a burden upon Interstate Commerce
violation of said Interstate Commerce clause in the Federal Con
tution and is discriminatory against owners of automobiles in fa
of owners of other property of substantially the same kind, in vio
tion of said Fourteenth Amendment to the Federal Constitution.

Dated, October 26th, 1908.

GRIGGS & HARDING,
Attorneys of Defendant

58 New Jersey Supreme Court.

THE STATE, FRANK J. KANE, Prosecutor,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the T
Below, Defendant.

On Certiorari.

Reasons.

The said Prosecutor, Frank J. Kane, by Griggs & Harding,
attorneys, comes and prays that the judgment and conviction m
against him by the Recorder of the City of Paterson in a cer
cause brought against him in said Recorder's Court by the S
Henry Titus prosecutor, in violation of the Fifteenth and Sixte
sections of the act approved April 12, 1906, and the amendm
thereto approved April 16, 1908, hereinafter set forth, may be
aside, reversed and for nothing holden for the following reason

1. Because the acts of the New Jersey Legislature for the v
tion of which this action is brought, being entitled "An Act defi
motor vehicles and providing for the registration of the same
the licensing of the drivers thereof; fixing rules regulating the
and speed of motor vehicles; fixing the amount of license and r
tration fees; prescribing and regulating process and the se
thereof and proceedings for the violation of the provisions of th
and penalties for said violation," approved April 12th, 1906,
the amendment of said act approved April 16th, 1908, violate
ticle IV, Section VII, paragraph 12, of the Constitution of the
of New Jersey, which ordains, that "Property shall be ass
59 for taxes under general laws, and by uniform rules ac
ing to its true value."

2. Because, the fee or sum imposed and required by section
said act of 1906 as amended by said Act of 1908, which is req
before the owner of automobiles can drive or use them on the p
highways of New Jersey, is in substance and effect a tax upon
erty; under said act and amendment the imposition of said tax
automobiles is regulated as to the amount of tax, according t
horsepower of automobiles, and not according to their true v
moreover, by the said act and amendment the said tax is p
upon automobiles only, and is not placed upon other personal

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erty, whose situs for taxation is in New Jersey; by reason whereof, said tax so imposed by said act and amendment is a taxation of property not by uniform rules, as required by said provision of said Constitution.

3rd. Because, said automobiles are so taxed by said act and amendment as aforesaid, although such tax is not imposed upon other personal property naturally belonging to the same class, such as wagons and other vehicles used upon the highways, whereby, under said act and amendment, said tax is arbitrary, unjust and discriminatory, in making automobiles a class for said taxation and excluding therefrom other property of the same or similar nature.

4th. Because, the said automobiles so taxed by said act and amendment whose situs for taxation is in New Jersey are also taxed and taxable under the general tax laws of New Jersey, whereby the owners of automobiles if required to pay said tax and burden imposed by said act of 1906 and amendment of 1908 are subjected to double taxation thereon, which is an unjust and illegal taxation.

5th. Because, the said act of 1906 and amendment of 1908, by imposing said tax and burden upon the automobile of defend-
60 ant who was a resident of New York, and whose automobile was not located in New Jersey, or liable to be taxed by said State as personal property, violates Article 1, Section 8, of the Constitution of the United States, which gives to the Congress power to regulate commerce among the several States. The defendant contends, that the requirement of the payment of said fee for the registration of defendant's automobile by said act of 1906 and its amendment of 1908, before said defendant may drive or use the same upon the highways of New Jersey, is a burden and tax upon Interstate Commerce, in violation of the Constitution and laws of the United States regulating Interstate Commerce passed by the Congress of the United States; and that the Legislature of New Jersey had no power or authority to enact said act of 1906 and amendment of 1908, which imposes such tax and burden on Interstate Commerce and the Commerce and Intercourse of this defendant in the State of New Jersey in going from the State of New York, into and through the State of New Jersey, to and into the State of Pennsylvania.

6th. Because, the said act of 1906 and amendment thereto of 1908, in requiring the payment of said fee for registration of defendant's said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, violates the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides, that, "No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The defendant contends, that the above provision of the Federal Constitution is violated, in that the said act of 1906 and amendment thereto of 1908 by requiring from defendant the said fee for the registration of his said automobile and the

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registration thereof, as aforesaid, and not making any such req
ment of the owners of other personal property of substantially
same nature with reference to its use of the highways of New Je
is an unjust, and arbitrary classification and discrimination ag
the defendant in favor of such other owners of property of sub
tially the same nature.

7th. Because, the said act of 1906 and amendment theret
1908, in providing that every owner having a residence outsid
the State of New Jersey shall file with the Secretary of State of
Jersey a duly executed instrument, constituting the said Secre
of State and his successors in office, the true and lawful atto
upon whom all original process in any action or legal proce
caused by the operation of his registered automobile, within
Jersey, against such owner may be served, and therein shall
that any original process against such owner shall be of the
force and effect as if served on such owner within the State, as
vided in Section Sixteen of said act of 1906 as amended in sai
of 1908, violates the said Fourteenth Amendment to the Con
tion of the United States, which provides as hereinbefore set f
in that the said requirement of said act of 1906, as provided in
Section Sixteen thereof as amended by the said amendment th
of 1908, is an unjust and arbitrary discrimination against
defendant as a non-resident of New Jersey, and who is a reside
New York, in favor of the residents of New Jersey, who are
mitted to drive and use their automobiles upon the highwa
New Jersey without being required to file said instrument wit
Secretary of State, and without being subject to said require
provided in said sixteenth section of said act of 1906 as ame
by the amendment thereto of 1908 as above set forth. This de
ant contends, that there is no natural or just basis for
62. ification in thus making such requirements of non-resi
and not making the same requirement of residents of
Jersey, and that said act of 1906, and amendment thereto of
is an unjust and arbitrary discrimination against this defenda
resident of New York in favor of residents of New Jersey, and
lates said provision of the Fourteenth amendment.

8th. Because, the facts stipulated and found by said Rec
show, that the said fees required and collected for registratio
automobiles by the said act of 1906 and amendment thereto, gr
exceed all costs and expenses necessary or applicable for the e
tion and carrying out of the provisions of said acts as an ex
of the Police Power of the State; and that the fees required
collected thereby for licensing drivers of automobiles greatly e
all such costs and expenses necessary or applicable for the exec
and carrying out of said provisions of said acts as an exercise o
Police Power of the State.

Wherefore, this defendant contends, that said fees or sum
quired are a burden imposed for revenue and in substance and
a tax upon property, and thereby opposed to the Constitution of
Jersey requiring that property shall be assessed for taxes under

eral laws, and by uniform rules, and according to its true value, and being such a tax is also a burden upon Interstate Commerce in violation of said Interstate Commerce clause in the Federal Constitution and is discriminatory against owners of automobiles in favor of owners of other property of substantially the same kind, in violation of said Fourteenth Amendment to the Federal Constitution.

9th. Because, the said act and amendment and the imposition of said fee for registration of automobiles, and the other requirements made upon owners of automobiles by said act, before they are permitted to drive or use the same upon the highways of New Jersey are in divers other respects illegal, unjust and oppressive.

GRIGGS & HARDING,
Attorneys of Prosecutor, Frank J. Kane.

63 New Jersey Supreme Court, June Term, 1910.

THE STATE, FRANK J. KANE, Prosecutor,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the Trial Below, Defendant.

On Certiorari.

Rule for Judgment.

This matter coming on to be heard in the presence of Messrs. Griggs & Harding, of counsel with the defendant, and Nelson B. Gaskill, Assistant Attorney General of the State of New Jersey, and the Court having examined the pleadings and considered the evidence, and being of the opinion that the judgment below should be affirmed:

It is ordered that the judgment of conviction of the Recorder's Court of the City of Paterson, in the above entitled cause, be and the same is hereby affirmed, with costs.

Entered September twelfth, nineteen hundred and ten on motion of Edmund Wilson, Attorney General.

64 New Jersey Supreme Court.

THE STATE, FRANK J. KANE, Prosecutor,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the Trial Below, Defendant.

Opinion of Supreme Court.

Filed September 2, 1910.

On Certiorari Bringing up a Conviction of Frank J. Kane in the Recorder's Court of the City of Paterson for Violating the Provisions of the Automobile Statute, P. L. 1908, p. 613.

Argued at the June term 1909, before Justices Reed, Bergen and Voorhees.

Ex-Attorney Gen. John W. Griggs, John W. Harding and Charles T. Terry, (of the New York bar) for the prosecutor in certiorari.

Nelson B. Gaskill, Asst. Attorney General, for the defendant.

The opinion of the court was delivered by

REED, *J.:*

The cause was tried below upon a stipulation entered into between the respective attorneys. By this stipulation it appears that on October 5th, 1908, Mr. Kane, the prosecutor of this writ of certiorari, being a resident of Woodhaven, Long Island, in the State of New York, drove his 30 h. p. automobile on the public highways of New Jersey from Fort Lee, in the County of Bergen, State of New Jersey, to the City of Paterson, without having registered, or applied to register his automobile, or paying the fee required therefor, or obtaining a license therefor, and without having filed with the
65 Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his true and lawful attorney upon whom all original processes in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey against him might be served; and therein agreeing that any original processes against him shall be of the same force and effect as if served on him within this State, as provided for in the 15th and 16th sections of the Act of the Legislature of New Jersey, approved April 12th, 1906, and the amendment of said Act approved April 16th, 1908.

The stipulation shows that Mr. Kane was using his automobile in going from the city of Paterson in New Jersey, to the Delaware Water Gap in the State of Pennsylvania and that while upon Washington Street, Paterson, on his way to the said Delaware Water Gap, he was arrested and apprehended upon a complaint made and warrant issued against him.

He was duly licensed to drive an automobile of 30 h. p. upon the

public highways of this State, but this automobile was not registered or licensed.

The facts exhibit a violation of the statute, and the question discussed in the briefs of the respective counsel is the validity of the statute. The stipulation contains a statement of the expenses and receipts for operating the department of Commissioner of Motor Vehicles. The purpose of this exhibition is to show that the statutory scheme is one to provide a revenue, one of the contentions being that the provisions of the statute are not confined to regulative purposes under the police power.

The facts involved in this case, so far as concerns the questions of law mooted, are substantially similar to the facts in the case of Cleary vs. Johnson, 74 At. Rep., 538.

Briefs were submitted simultaneously in that case, and in this case; and the opinion delivered in Cleary vs. Johnson was
66 intended to be dispositive of both cases.

For the reasons stated in the Cleary vs. Johnson case, we think this conviction must be affirmed.

67 New Jersey Court of Errors and Appeals.

THE STATE, FRANK J. KANE, Prosecutor, Plaintiff in Error,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the Trial Below, Defendant in Error.

On Error.

Assignments of Error.

(Filed November 4, 1910.)

Afterwards, that is to say, on the first day of November, nineteen hundred and ten, before the Court of Errors and Appeals in the last resort in all cases, comes The State, Frank J. Kane, Prosecutor, by Griggs & Harding his attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. That by the judgment aforesaid of the Supreme Court, the judgment of conviction of the Recorder's Court of the City of Paterson of the said Frank J. Kane brought up before the Supreme Court by its writ of certiorari was affirmed with costs and held valid, whereas, by the law of the land the said judgment of conviction should have been held invalid and void, reversed and set aside with costs to the said prosecutor in certiorari.

Second. That the said Supreme Court by its judgment aforesaid dismissed the said writ of certiorari, whereas the same should have been sustained.

68 Third. That the said Supreme Court by its judgment aforesaid held and decided that the acts of the New Jersey Legislature for the violation of which this action is brought, being

entitled "An Act defining motor vehicles and providing for th registration of the same and licensing of the drivers thereof; fixin rules regulating the use and speed of motor vehicles; fixing th amount of license and registration fees; prescribing and regulatin process and the service thereof and proceedings for the violation the provisions of the act and penalties for said violation," approve April 12th, 1906, and the amendment of said act approved Apr 16th, 1908, do not violate Article IV, Section VII, paragraph 12, the Constitution of the State of New Jersey, which ordains th "Property shall be assessed for taxes under general laws, and by th uniform rules according to its true value," whereas the same shoul have been held unconstitutional and void.

Fourth. That the said Supreme Court by its judgment aforesai erroneously held and decided that the fee or sum imposed an required by section 16 of said act of 1906 as amended by said A of 1908, which is required before the owner of automobiles can driv or use them on the public highways of New Jersey, is not in sub stance and effect a tax upon property; and that said Supreme Cou also erroneously held and decided that, although under said act an amendment the imposition of said tax is placed upon automobil only and is not placed upon other personal property whose situs fo taxation is in New Jersey, said tax so imposed by said act and amend ment is a taxation of property by uniform rules as required by sai provision of the said constitution.

Fifth. That the said Supreme Court by its judgment aforesai erroneously held and decided that, although said automobiles are taxed by said act and amendment as aforesaid, and althoug
69 such tax is not imposed upon other personal property natu rally belonging to the same class, such as wagons and othe vehicles used upon the highways, said tax is not arbitrary, unju and discriminatory, in making automobiles a class for said taxatio and excluding therefrom other property of the same or similar natur

Sixth. That the said Supreme Court by its judgment aforesai erroneously held and decided that, although the said automobiles taxed by said act and amendment whose situs for taxation is in Ne Jersey are also taxed and taxable under the general tax laws of Ne Jersey, and the owners of automobiles if required to pay said tax an burden imposed by said act of 1906 and amendment of 1908 are sub jected to double taxation thereon, the same is not an unjust and ill gal taxation.

Seventh. That the said Supreme Court by its judgment aforesai erroneously held and decided that, although the said act of 1906 an amendment of 1908, by imposing said tax and burden upon the aut mobile of defendant who was a resident of New York, and whos automobile was not located in New Jersey, or liable to be taxed b said State as personal property, does not violate Article 1, Section of the Constitution of the United States, which gives to the Congre power to regulate commerce among the several States; and erron ously decided that the requirement of the payment of said fee for th registration of defendant's automobile by said act of 1906 and i

amendment of 1908, before said defendant may drive or use the same upon the highways of New Jersey, is not a burden and tax upon Interstate Commerce, in violation of the Constitution and laws of the United States regulating Interstate Commerce passed by the Congress of the United States and that the Legislature of New Jersey had power or authority to enact said act of 1906 and amendment of 1908, and did not impose such tax and burden on Interstate
70 Commerce and the Commerce and Intercourse of this defendant in the State of New Jersey in going from the State of New York, into and through the State of New Jersey, to and into the State of Pennsylvania.

Eighth. That the said Supreme Court by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in requiring the payment of said fee for registration of defendant's said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, does not violate the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides that, "No State shall make or enforce any law which shall abridge the privilege- or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The said Supreme Court by its judgment aforesaid, erroneously held and decided that the above provision of the Federal Constitution is not violated, in that the said act of 1906 and amendment thereto of 1908 by requiring from defendant the said fee for the registration of his said automobile and the registration thereof, as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is not an unjust and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

Ninth. That the said Supreme Court by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in providing that every owner having a residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, consti-
71 tuting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section Sixteen of said act of 1906 as amended in said act of 1908, does not violate the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth, in that the said requirement of said act of 1906, as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and

who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey without being required to file said instrument with the Secretary of State, and without being subject to said requirements provided in said sixteenth section of said act of 1906 as amended by the amendment thereto of 1908 as above set forth. The said Supreme Court by its judgment aforesaid, erroneously held and decided that there is a natural and just basis for classification in thus making such requirements of non-residents and not making the same requirements of residents of New Jersey, and that said act of 1906, and amendment thereto of 1908, is not an unjust and arbitrary discrimination against this defendant as resident of New York in favor of residents of New Jersey, and does not violate said provision of the Fourteenth amendment.

Tenth. That the said Supreme Court by its judgment aforesaid, erroneously held and decided that the facts stipulated and found by said Recorder show, that the said fees required and collected for registration of automobiles by the said act of 1906 and amend-
72 ment thereto, do not greatly exceed all costs and expenses necessary or applicable for the execution and carrying out of the provisions of said acts as an exercise of the Police Power of the State; and erroneously decided that the fees required and collected thereby for licensing drivers of automobiles do not greatly exceed all such costs and expenses necessary or applicable for the execution and carrying out of said provisions of said acts as an exercise of the Police Power of the State.

Wherefore, the said Supreme Court by its judgment aforesaid, erroneously held and decided that said fees or sums required are not a burden imposed for revenue and in substance and effect a tax upon property, and thereby opposed to the Constitution of New Jersey requiring that property shall be assessed for taxes under general laws, and by uniform rules, and according to its true value, and being such a tax is not a burden upon Interstate Commerce in violation of said Interstate Commerce clause in the Federal Constitution and is not discriminatory against owners of automobiles in favor of owners of other property of substantially the same kind, in violation of said Fourteenth Amendment to the Federal Constitution.

Wherefore the plaintiff in error prays that the judgment aforesaid, by reason of said errors and of other errors appearing in the record and proceedings aforesaid, may be reversed, annulled and for nothing holden, and that the plaintiffs in error may be restored to all things which they have lost by occasion of said judgment.

GRIGGS & HARDING,
Attorneys for Plaintiff in Error.

Joinder in Error.

The defendant in error filed a joinder in error in the common form.

73 STATE OF NEW JERSEY:

Court of Errors and Appeals, June Term, 1911.

Appeal from — Court.

Error to Supreme Court.

FRANK J. KANE, Plaintiff in Error,
and
HENRY TITUS, Defendant in Error.

No. 96 of March Term, 1911.

Date, June 22, 1911.

Chancellor Presiding.

Opinion by Gummere, C. J.

Check list.	Affirmed.	Reversal.	M.
The Chancellor	1	..	..
" Chief Justice	1	..	..
Mr. Justice Garrison	1	..	..
" " Swayze	1	..	..
" " Trenchard	1	..	..
" " Parker	1	..	..
" " Bergen	..	..	..
" " Minturn	1	..	..
" " Kalisch	..	..	..
" " Black	..	..	..
Judge Bogert	1	..	..
" Vredenburgh	1	..	..
" Congdon	1	..	..
" White	..	..	.
" Terhune	..	..	..
" Heppenheimer	..	..	..
" Sullivan	1	..	..
Totals	11	0	..

74 A law which imposes a license fee upon the owners of all automobiles using the improved public highways of the state, the amount of such fee being determined by the horse-power of the vehicle, although it incidentally affects interstate commerce, is not a regulation of such commerce within the meaning of the commerce clause of the federal constitution.

75 New Jersey Court of Errors and Appeals.

FRANK J. KANE
vs.
THE STATE, HENRY TITUS, Prosecutor.

Error to Supreme Court.

For plaintiff in error, John W. Griggs. On the brief, John W. Harding and Charles T. Terry, of the New York Bar.

For the State, Edmund Wilson, Attorney General, and Nelson B. Gaskill, Assistant Attorney General.

The opinion of the Court was delivered by GUMMERE, *C. J.*:

The plaintiff in error, a resident of the state of New York, while driving his automobile along the highways of this state, on his way from his place of residence to a town in the state of Pennsylvania, was arrested for violating the 15th and 16th sections of the Automobile Law of 1908, by not having registered his machine, or paid the fee required for doing so; and by not having filed with the Secretary of State a duly executed instrument constituting that official his attorney upon whom all original process in any action or legal proceeding brought against him, and arising out of the operation of his automobile within the state, might be served. His prosecution for this offence followed his arrest and resulted in a conviction. Upon a review of that conviction by the Supreme Court there was an affirmance, the court considering that the case was governed
76 by its deliverance in Cleary vs. Johnston, 74 Atl. 538. The plaintiff in error, by the present writ, attacks the legality of the original conviction, and of its affirmance.

The first contention made in his behalf is that the Automobile Law of 1908 is invalid, because the license fees exacted by it are not limited to the cost of registration and inspection, and the act is therefore intended as a revenue measure. In Cleary vs. Johnston, supra, the proofs submitted were not considered by the court to be demonstrative that the statute was a revenue measure; the court, however, pointed out that if such was conceded to be its object the law was, nevertheless, not invalid on that account, for the reason that the imposition of license fees for revenue purposes was clearly within the sovereign power of the state. We agree with counsel of the plaintiff in error that the proofs taken in the present case satisfactorily show that the present automobile law is a revenue measure, but hold, in accordance with the view expressed by the Supreme Court and above adverted to, that, in passing it, the legislature was fully within the powers conferred upon it by the constitution. The former decisions of our courts upon this subject are fully cited in the opinion in the Cleary case, and a recitation of them by us is unnecessary.

It is further contended by the plaintiff in error that, conceding the power of the legislature to impose license fees upon its own citizens for the purpose of raising revenue, the statute under consider-

tion, because it imposes such fees upon non-residents passing through the state, and engaged in interstate commerce, violates the commerce provision of the federal constitution, and is, therefore, to that extent, void; that plaintiff in error was so engaged at the time of his
77 arrest, and that for this reason his conviction should be set aside.

We are willing to assume, in the discussion of this point, that the claim of the plaintiff in error that at the time of his arrest he was engaged in interstate commerce is justified by the fact. This being so the important question remains whether the act of 1908 is to any extent a regulation of commerce between the states, within the meaning of the commerce clause of the federal constitution. That it affects interstate commerce is true. But state laws may do this without being obnoxious to the constitutional provision appealed to. For example, a state may erect, or authorize the erection, of wharves along the banks of its navigable rivers which are used for commerce between the states, and charge, or authorize to be charged, wharfage fees for the privilege of receiving and landing thereon passengers and freight which come from other states, without infringing upon that provision. The imposition of such charges, although affecting interstate commerce is, nevertheless, a legitimate exercise of state power. Transportation Co. vs. Parkersburg, 107 U. S. 691. So, too, a state may construct locks in such rivers in order to improve the navigation thereof, and legally charge reasonable tolls to persons using such locks while engaged in interstate commerce. Huse vs. Glover, 119 U. S. 543. It may construct, or authorize to be constructed, in such waters, booms for the purpose of increasing the facility with which the business of floating and gathering logs may be conducted thereon, and lawfully charge, or authorize to be charged, reasonable sums for the use of such booms in the floating of logs from a point within the state to a point outside thereof, or vice versa. Lindsay and Phelps Co. vs. Mullin, 176 U. S. 126. A state may do these things because,
78 having expended moneys, either itself, or by the agencies created by it, in increasing the facility with which commerce either interstate or intrastate may be carried on, it is entitled to charge a fair remuneration for the outlay made by it, and for the maintenance of the public work which it has constructed.

A very ordinary example of the exercise of this power is the construction of public roads known as "turnpikes" by agencies created by the state, for the use of which tolls are permitted to be charged to persons using the same. Such public roads are open to the use of every person desiring to travel upon them upon payment of the tolls authorized to be charged, but it has never been suggested, so far as we are aware (and certainly any such suggestion would be without merit), that a team and wagon bringing merchandise from another state is entitled to the use of these improved highways without the payment of the required toll because engaged in interstate commerce.

Although, ordinarily, turnpikes are built and owned by corporations created by the state for the purpose of constructing and main-

taining them, what the state may do indirectly through su
agencies it may do directly; that is, it may itself lay out and c
struct such improved public roads, and charge reasonable tolls to
persons using the same, without regard to the character of the bu
ness for which they are being used. And this is practically wh
New Jersey is now doing. It has spent millions of dollars in i
proving the roads of the state, and is yearly expending hundreds
thousands more in their extension and maintenance. It has fou
that the use of these roads by heavy and swiftly moving automobi
results in their rapid deterioration, and increases largely the annu
expense of maintaining them in proper condition. It conside
and rightly, we think, that a user of its roads which is
79 abnormally destructive, should no longer be free, and, by t
law of 1908, it imposes upon all of these vehicles which
driven over its roads a charge for such user for the purpose of ra
ing revenue to be applied to their upkeep. Instead of charging
mileage fee, or toll, to be regulated by the distance travelled, it h
seen fit to require the payment of a lump sum by the owners of su
machines, for the privilege of using its roads, the charge being r
ulated by the horse-power shown, viz., automobiles of ten hor
power or less are charged $3, those between ten and thirty hor
power $5, and those of more than thirty horse-power $10. The pa
ment of these fees is required alike by residents and non-reside
for machines used for pleasure or for commerce. No discriminati
whatever is made by the statute in favor of any person or any au
mobile. It is absolutely impartial in its operation. By paying t
fee required the owner of an automobile, whether a resident or no
resident, is entitled to use the same upon the roads of the state to t
fullest extent he may desire.

The charging of an annual sum for the use of its highways
automobiles, instead of a mileage fee, is clearly a matter within t
discretion of the state. No constitutional objection lies in the w
of a legislative body prescribing any mode of measurement to det
mine the amount it will charge for the privilege it bestows. Ho
Insurance Co. vs. New York, 134 U. S. 594. The only limit up
its power is that the amount charged shall not be unreasonable; a
there is no suggestion that such a condition is created by the pres
law.

We conclude, therefore, that the contention of the plaintiff
error, that the act of 1908 contravenes the federal constitution,
without substance.

80 It is further contended on behalf of the plaintiff in er
that the imposition provided by the act of 1908 is a prope
tax, and invalid because it is imposed without regard to the val
of the property upon which it is laid. What we have already s
disposes of this contention. The character of the imposition is
determined by the mode adopted in fixing its amount. Maine
Grand Trunk Railway Co. 142 U. S. 217. The imposition is
license or privilege tax charged in the nature of compensation
the damage done to the roads of the state by the driving of th

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machines over them, and is properly based not upon the value of the machine, but upon the amount of destruction caused by it.

The other errors assigned and argued are fully discussed by the Supreme Court in its opinion in Cleary vs. Johnston, and we are entirely content with the disposition there made of them.

The judgment under review will be affirmed.

Endorsed: "Filed Jun- 22, 1911. S. D. Dickinson, Clerk."

81 [Endorsed:] New Jersey Court of Errors and Appeals. Frank J. Kane vs. The State, Henry Titus, Prosecutor. Opinion.

82 New Jersey Supreme Court.

THE STATE, FRANK J. KANE, Prosecutor,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor in the Trial Below, Defendant.

On Certiorari Bringing Up a Conviction of Frank J. Kane in the Recorder's Court of the City of Paterson for Violating the Provisions of the Automobile Statute, P. L. 1908, p. 613.

Argued at the June Term 1909, before Justices Reed, Bergen and Voorhees.

Ex-Attorney Gen. John W. Griggs, John W. Harding, and Charles T. Terry, (of the New York Bar) for the prosecutor in certiorari.

Nelson B. Gaskill, Ass't Attorney General, for the Defendant.

The opinion of the court was delivered by

REED, *J.*:

The cause was tried below upon a stipulation entered into between the respective attorneys. By this stipulation it appears that on October 5th, 1908, Mr. Kane, the prosecutor of this writ of certiorari, being a resident of Woodhaven, Long Island, in the State of New York, drove his 30 h. p. automobile on the public highways of New Jersey, from Fort Lee, in the county of Bergen, State of New Jersey, to the city of Paterson, without having registered, or applied to register his automobile, or paying the fee required therefor, or obtaining a license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his true and lawful attorney upon whom all original processes in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey against him might be served; and therein agreeing that any original processes against him shall be of the same force and effect as if served on him within this State, as provided for in the 15th and 16th sections of the Act of the legislature of New Jersey, approved

83 April 12th, 1906, and the amendment of said Act approved April 16th, 1908.

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The stipulation shows that Mr. Kane was using his automobil
going from the city of Paterson in New Jersey, to the Delaw
Water Gap in the State of Pennsylvania and that while upon W
ington Street, Paterson, on his way to the said Delaware Water
he was arrested and apprehended upon a Complaint made, and W
rant issued against him.

He was duly licensed to drive an automobile of 30 H. p. upon
public highways of this State, but this automobile was not regist
or licensed.

The facts exhibit a violation of the statute, and the question
cussed in the briefs of the respective counsel is the validity of
statute. The stipulation contains a statement of the expenses
receipts for operating the department of Commissioner of M
Vehicles. The purpose of this exhibition is to show that the
utory scheme is one to provide a revenue, one of the contentions b
that the provisions of the statute are not confined to regulative
poses under the police power.

The facts involved in this case, so far as concerns the questio
law mooted, are substantially similar to the facts in the cas
Cleary vs. Johnson, 74 At. Rep. 538.

Briefs were submitted simultaneously in that case, and in this
and the opinion delivered in Cleary vs. Johnson was intended t
dispositive of both cases.

For the reasons stated in the Cleary vs. Johnson case, we think
conviction must be affirmed.

A true copy.
WM. C. GEBHARDT, *Clerk.*

84 [Endorsed:] New Jersey Supreme Court. The
Frank J. Kane Prosecutor vs. The State of New J
Henry Titus, Pros. in the Trial Below, Defendant. Opinion.
J. Filed September 2, 1910. William Riker, Jr., Clerk.

85 New Jersey Court of Errors and Appeals, March Term,

Between FRANK J. KANE, Pl't'ff in Error,
vs.
HENRY TITUS, Def't in Error.

In Error to Supreme Court.

Order on Affirmance of Judgment.

This cause having been duly argued at the March Term, 19
this court by Griggs & Harding, of counsel for the plaintiff in
and Edmund Wilson, Att'y Gen'l of counsel for the defenda
error, and the court having considered the same, and finding no
in the record or proceedings in the Supreme Court—

It is thereupon, on this Twenty-second day of June, in the
of our Lord one thousand nine hundred and eleven, ordered a

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judged that the judgment of the Supreme Court, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

JOHN W. WESCOTT,
Attorney General, Attorney of Defendant in Error.

86 [Endorsed:] New Jersey Court of Errors and Appeals, March Term, 1911. In Error to Supreme Court. Frank J. Kane, Pl't'ff in Error, vs. Henry Titus, Def't in Error. Order Affirming Judgment. John W. Wescott, Attorney General, Att'y. Filed Mar. 6, 1914. David S. Crater, Clerk.

87 In the Supreme Court of the United States.

FRANK J. KANE, Plaintiff in Error,
against
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor, Defendant in Error.

To the Honorable Edward D. White, Chief Justice of the United States, and to the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, and to the other Justices of said Honorable Court, and to the Honorable the Supreme Court of the United States:

The petition of Frank J. Kane, who resides in the Town of Woodhaven, in the County of Queens, City and State of New York, respectfully shows:

I. Heretofore and on the 5th day of October, A. D. 1908, Frank J. Kane, the above-named plaintiff in error, then being a resident of Woodhaven, Long Island, in the County of Queens, City and State of New York, did drive his automobile, which was of thirty horsepower, in the State of New Jersey, and used his said automobile on the public highways of said State of New Jersey, by driving and using the said automobile upon said public highways from Fort Lee in the County of Bergen in the State of New Jersey, to and upon a public highway in the City of Paterson, in the County of Passaic, in the State of New Jersey, known and designated as Washing-

88 ton Street, without having registered his said automobile or applied to register the same, or paid the fee required therefor, or obtained any certificate or license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his said automobile within the State of New Jersey, against him may be served, and therein agreeing that any original process against him shall be of the same force and effect as if served on him within the State of New Jersey, as required and provided for in the fifteenth and sixteenth sections of

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an Act of the Legislature of the State of New Jersey, entitled, "A
Act defining Motor Vehicles and providing for the registration of th
same and the licensing of the drivers thereof; fixing rules, regulatin
the use and speed of motor vehicles, fixing the amount of license an
registration fees; prescribing and regulating process and the servic
thereof and proceedings for the violation of the provisions of th
Act and penalties for such violations", and approved April 12t
1906, and the amendment of said Act entitled, "An Act to amend a
Act entitled, 'An Act defining motor vehicles and providing for th
registration of the same, and the licensing of the drivers thereo
fixing rules, regulating the use and speed of motor vehicles; fixin
the amount of license and registration fees; prescribing and reg
lating process and the service thereof and proceedings for the viol
tion of the provisions of the Act and penalties for said violation
approved April 16th, 1908."

89 II. That said Frank J. Kane when on Washington Stre
in the City of Paterson as aforesaid, was then going on h
way and driving and using his said automobile upon the highwa
of New Jersey in going from the said City of Paterson to the Del
ware Water Gap in the State of Pennsylvania, having come fro
Fort Lee as aforesaid, and having reached said City of Paterson
aforesaid and while upon said Washington Street on his way
said Delaware Water Gap as aforesaid, the said Frank J. Kane w
arrested and apprehended upon the complaint made and the wa
rant issued in the above action; that at the time of said arrest a
theretofore as aforesaid, said Frank J. Kane was and had been t
owner of said automobile, and kept the same with his other pro
erty at his stable or automobile building in Long Island as aforesa
permanently, except at such times as said Frank J. Kane transient
drove said automobile upon the highways, and that at the time
his arrest as aforesaid he was driving and using his said automob
upon the highways of New Jersey, only in transit from Fort L
to the Delaware Water Gap as aforesaid; that at the time of
said arrest the said Frank J. Kane was duly licensed to drive
automobile of thirty horse power and greater than thirty ho
power, upon any public highway in the State of New Jersey, where
he was licensed to drive an automobile of the power and kind
his said automobile which was of thirty horse power, upon a
public highway in the State of New Jersey, the said Frank J. Ka
having been duly licensed to so drive, having fulfilled all requi
ments and conditions in accordance with the Seventeenth Section
said act and amendment thereof.

90 III. That the said amendment of said act took effect Ap
16th, 1908; that a small number of automobiles w
registered and a small number of persons licensed to drive auto
biles during the time from April 16th, 1908, until May 1, 19
which are not herein stated; that from May 1st, 1908 until Octo
1st, 1908, under and pursuant to said amendment of said a
fourteen thousand and one hundred (14,100) automobiles w
registered; that the total fees or amounts paid to the Commissio
of Motor Vehicles for said registration of automobiles was eigh

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three thousand four hundred and thirty-eight dollars ($83,438); that from May 1, 1908 until October 1, 1908, thirteen thousand nine hundred and sixty-seven (13,967) persons were licensed to drive automobiles, and that the total fees or amounts paid to said Commissioner of Motor Vehicles for licensing said persons to drive automobiles was thirty-eight thousand two hundred and fifty dollars ($38,250); that from May 1st, 1908 to October 1st, 1908, the total amount of fines collected and received by said Commissioner of Motor Vehicles under and pursuant to said amended act was four thousand seven hundred and eighty-five dollars and fifty cents ($4,785.50); that the total amount for said fees for registration of automobiles, for said licensing said persons to drive automobiles and the said fines, all being collected and received by the said Commissioner of Motor Vehicles from May 1, 1908 to October 1, 1908, was one hundred and twenty-one thousand two hundred and thirty-six dollars and twenty-eight cents ($121,236.28); the sum of five thousand three hundred and thirty-seven dollars and thirty-
91 two cents ($5,337.32) having been paid as fees to agents from May 1st, 1908, to October 1st, 1908, pursuant to Section 10 of said act of 1906, whereby said total sum of one hundred and twenty-one thousand two hundred and thirty-six dollars and twenty-eight cents ($121,236.28) over and above said fees paid to agents as aforesaid, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act and amendment; that from May 1, 1908 to October 1st, 1908, the total cost and expenses of every kind incurred in enforcing, executing, carrying out and maintaining the provisions of said act and amendment and for doing all work or business and providing all things and paying all expenses required therefor, was twenty-two thousand seven hundred and eighty-one dollars and one cent ($22,781.01), made up of the following items, viz:

Commissioner's salary	$625.00
Chief Inspector's salary	625.00
Markers	8,818.20
Purchase of Motorcycle and expenses	1,776.70
Total	$22,781.01

that under and pursuant to said act of 1906, from May 1st 1906, to December 31st, 1906, thirteen thousand seven hundred and fifty-nine (13,759) automobiles were registered; that the total fees or amounts paid to said Commissioner of Motor Vehicles for said registration of said automobiles was forty-six thousand, seven hundred and sixty-three dollars ($46,763); that from May 1st, 1906, to December 31st, 1906, fifteen thousand two hundred and sixty-nine (15,269) persons were licensed to drive automobiles and that the total fees or amounts paid to said Commissioner of Motor
92 Vehicles for licensing said last named persons to drive automobiles, was twenty thousand two hundred and nine dollars ($20,209); that from May 1st, 1906, to December 31st, 1906, the amount of fines collected and received by said Commissioner of

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Motor Vehicles under and pursuant to said act of 1906, was nine hundred and ninety-one dollars ($991); that the total amount for said fees for registration of automobiles, for said licensing said persons to drive automobiles, and the said fines, all being collected and received by the said Commissioner of Motor Vehicles from May 1st, 1906, to December 31st, 1906, was sixty-three thousand two hundred and twenty-four dollars and ninety-one cents ($63,224.91); the sum of four thousand seven hundred and thirty-eight dollars and nine cents ($4,738.09) having been paid as fees to agents from May 1, 1906, to December 31, 1906, pursuant to Section 10 of said act of 1906, whereby said total sum of sixty-three thousand two hundred and twenty-four dollars and ninety-one cents ($63,224.91), over and above said fees paid to agents as aforesaid, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act of 1906; that from May 1, 1906, to December 31st, 1906, the total costs and expenses of every kind incurred in enforcing, executing, carrying out and maintaining the provisions of said law of 1906, and for doing all work or business and providing all things and paying all expenses required therefor, was four thousand seven hundred and thirty-eight dollars and nine cents ($4,738.09); that the tabulated statement hereto annexed entitled "Recapitulation by months for 1906", marked No. 1, is made a part of this petition, and shows for each month

93 from May to December inclusive for the year 1906, the number of automobiles registered under the column marked "Reg."; the amount of fees therefor under the column marked "Am't"; the number of persons licensed to drive automobiles under the column marked "Lic."; the amount of fees therefor under the next column marked "Am't"; the amount of fines under the column marked "Fines;" the total costs and expenses of every kind incurred as aforesaid, under the column marked "Am't paid out," and the total amount collected and received by said Commissioner of Motor Vehicles and paid by him to the Treasurer of the State of New Jersey as aforesaid, under the column marked "Paid State Treasurer"; that from December 31st, 1906, to December 31st, 1907, under and pursuant to said act of 1906, seventeen thousand six hundred and nineteen (17,619) automobiles were registered; that the total fees or amounts paid to the Commissioner of Motor Vehicles for said registration of said automobiles was sixty-one thousand five hundred and ninety-four dollars and twenty-five cents ($61,594.25); that, from December 31st, 1906, to December 31st, 1907, eighteen thousand and eighty-five (18,085) persons were licensed to drive automobiles, and that the total fees or amounts paid to said Commissioner of Motor Vehicles for licensing said persons to drive automobiles, was twenty-five thousand five hundred and twenty-nine dollars ($25,529); that from December 31, 1906, to December 31, 1907, the total amount of fines collected and received by said Commissioner of Motor Vehicles under and pursuant to said act of 1906, was five thousand six hundred and forty dollars ($5,640); that the total amount of said fees for registration

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of automobiles, for said licensing said persons to drive automobiles, and the said fines, all being collected and received by said Commissioner of Motor Vehicles from December 31, 06, to December 31, 1907, was eighty-five thousand six hundred d ninety-four dollars and eighty-seven cents ($85,694.87), the m of seven thousand and sixty-eight dollars and thirty-eight cents 7,068.38) having been paid as fees to agents from December 31, 06, to December 31, 1907, pursuant to said section 10, of said act 1906, whereby said total sum of eighty-five thousand and six ndred and ninety-four dollars and eighty-seven cents ($85,-4.87) over and above said fees paid to agents, has been paid said Commissioner of Motor Vehicles to the Treasurer of the ate of New Jersey, pursuant to said act of 1906; that from Decem-r 31, 1906, to December 31, 1907, the total costs and expenses of ery kind incurred in enforcing, executing, carrying out and aintaining the provisions of said law of 1906, and for doing all rk or business and providing all things and paying all expenses quired therefor, was twelve thousand four hundred and six dol-rs and eighty-two cents ($12,406.82) made up of the following ems, viz:

lary of Commissioner	$1,500.00
lary of Chief Inspector	1,500.00
mpensation of Inspectors and their Equipment	1,311.00
erical service	4,513.69
xpense and equipment of Inspectors	739.65
urchase of motorcycles	275.00
lanks and stationery	844.85
ostage, expressage and other incidental expenses	1,722.63
	$12,406.82

5 that the tabulated statement hereto annexed entitled "Report for 1907," marked No. 2, is made a part of this petition, nd shows, for each month from December 31, 1906, to December 1, 1907, the number of automobiles registered under the column narked "Reg."; the amount of fees therefor under the column narked "Am't"; the number of persons licensed to drive automo-iles under the column marked "Lic."; the amount of fees therefor nder the next column marked "Am't"; and the amount of fines nder the column marked "Fines;" the amount paid as fees to gents, pursuant to said Sec. 10 of said act under the column narked "Fees;" and the total amount collected and received by aid Commissioner of Motor Vehicles and paid by him to the Treas-rer of the State of New Jersey as aforesaid, under the column narked "Total;" that from January 1st, 1908, to May 1st, 1908, nder and pursuant to said act of 1906 three thousand five hun-dred and fifteen (3,515) automobiles were registered; that the otal fees or amounts paid to the Commissioner of Motor Vehicles or said registration of said automobiles was fourteen thousand and ifty-six dollars ($14,056); that from January 1st, 1908, to May 1st, 1908, three thousand and eighty-six (3,086) persons were

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licensed to drive automobiles, and that the total fees or amount paid to said Commissioner of Motor Vehicles for licensing said persons to drive automobiles, was five thousand three hundred and fifty-nine dollars ($5,359); that from Jan. 1st, 1908, to May 1st 1908, the total amount of fines collected and received by said Commissioner of Motor Vehicles under and pursuant to said Act of 1906, was seven hundred and eighty-five dollars ($785); that the
96 total amount for said fees for registration of automobiles for said licensing said persons to drive automobiles, and the said fines, all being collected and received by said Commissioner of Motor Vehicles from Jan. 1st, 1908, to May 1st 1908, was eighteen thousand two hundred and ninety-one dollars and fifty-three cents ($18,291.53); the sum of one thousand eight hundred and eight dollars and fifty-seven cents ($1,808.57) having been paid as fees, to agents from Jan. 1st, 1908, to May 1st, 1908 pursuant to said section 10 of said act of 1906, whereby said total sum of eighteen thousand two hundred and ninety-one dollars and fifty-three cents ($18,291.53) over and above said fees paid to agents as aforesaid, has been paid by said Commissioner of Motor Vehicles to the Treasurer of the State of New Jersey, pursuant to said act of 1906; that, from Jan. 1st, 1908, to May 1st, 1908, the total costs and expenses of every kind incurred in enforcing, executing, carrying out and maintaining the provisions of said act of 1906, and for doing all work or business and providing all things and paying all expenses required therefor, was four thousand three hundred and forty-five dollars and ninety-eight cents ($4,345.98 made up of the following items, viz:

Commissioner's Salary	$500.0
Chief Inspector's salary	500.0
Inspector's Expenses	212.3
Inspector's Salary	525.0
Clerical	1,341.3
Expressage, Postage, etc.	488.5
Stationery	564.1
Expense of equipment	213.1
Total	$4,345.9

97 that the tabulated statement hereto annexed marked No. is made a part of this petition, and shows under column marked "Year" successively the part of the year 1906, from May 1st, 1906, to Dec. 31st, 1906, inclusive; the total year of 1907; the period from Jan. 1, 1908, to May 1, 1908; and from May 1, 1908 to Oct. 1, 1908; under the column marked "Reg." is shown the total number of automobiles registered for the period opposite the same; under the column marked "Am't" is shown the total amount of fees for registration of automobiles for the period opposite the same; under the column marked "Lic." is shown the total number of persons licensed to drive for the period opposite the same; under the next column marked "Am't" is shown the total amount

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such fees for licensing persons to drive for the period opposite the same; under column marked "Fines" is shown the amount of fines collected under said act for the period opposite the same; under the column marked "Ex. Fees" is shown the amount of fees of agents under said section 10 of said act, for the period opposite the same, and under the column marked "Paid to Treasurer" is shown the total amount collected and received by the said Commissioner of Motor Vehicles and paid by him to the Treasurer of New Jersey, over and above said fees paid to agents, pursuant to said section 10 of said act, for the period opposite the same; that the tabulated statement hereto annexed marked No. 4, is made a part of this petition, and shows the items of said total costs and expenses of every kind incurred in enforcing, executing, carrying out and managing the provisions of said act and amendment, and for doing all work or business and providing all things and paying all ex-
98 penses required therefor, for the periods of time from Jan. 1st, 1908, to May 1st, 1908, and from May 1st, 1908, to October 1st, 1908; that the said costs and expenses of every kind incurred in enforcing, executing, carrying out and managing the provisions of said act and for doing all work or business and providing all things and paying all expenses required therefor, before and since said amendment, has always been and is about equally incurred and applied in the department of registration of automobiles and that of licensing of drivers thereof.

IV. That on the 5th day of October, 1908, Frank J. Kane, was brought in the Recorder's office of the City of Paterson, County of Passaic, and State of New Jersey, before the Recorder of the City of Paterson, on the charge upon a complaint of Henry Titus, Police Officer of the City of Paterson, wherein said Henry Titus charged said Frank J. Kane, that the said Frank J. Kane, on the fifth day of October, nineteen hundred and eight, then a resident of Woodhaven, Long Island, in the State of New York, did drive his automobile which was of thirty horsepower in the State of New Jersey, and use his said automobile on the public highways of said State by driving and using his said automobile upon said public highways from Fort Lee in the County of Bergen, in the State of New Jersey, to and upon a public highway in the City of Paterson in the County of Passaic and State of New Jersey, known and designated as Washington Street, without having registered said automobile, or applied to register the same, or paid the fee required therefor, or obtained any certificate or license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument con-
99 stituting the said Secretary of State his true and lawful attorney upon whom all original process in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey, against him may be served and therein agreeing that any original process against him shall be of the same force and effect as if served on him within this State, in violation of the Fifteenth and Sixteenth Sections of an Act of the Legislature of the State of New Jersey, entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the

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drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees, prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," and approved April 12th, 1906, and the amendment of said Act entitled "An Act to amend an act entitled, 'An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said *violation of the provisions of the act and penalties for said* violations,' approved April 16, 1908.

V. And the said Frank J. Kane having been duly apprehended on a warrant duly issued by said Court and returned and
100 brought before said Court upon said charge on the day and year aforesaid, and having then and there pleaded not guilty to said charge, and the hearing and trial thereof having been pursuant to said act duly and regularly adjourned until the 26th day of October, 1908, upon which last named date, he, the said Frank J. Kane, having been put upon his trial upon said charge, and the said parties, prosecutor and defendant appearing in Court upon said trial by the Attorney General of New Jersey and Griggs & Harding, their respective counsel, and having entered into an agreement and stipulation in writing wherein and whereby the above parties, prosecutor and defendant, after reciting in said stipulation that they were desirous of avoiding the unnecessary trouble and expense of producing witnesses and records of documents of the facts involving the incident before the said Court, said records or documents being records or documents in the office of the Secretary of State at Trenton, New Jersey, not removable therefrom without public inconvenience and detriment, agreed that the facts above recited herein should be taken and received by the above Court on the above trial of the said action as true, in the same manner and to the same extent as if the said facts had been proven by the evidence of witnesses and documents or records produced and admitted in said Court, and upon the oath of said Henry Titus, and the facts stipulated to be true as aforesaid, the said Court did find said facts above recited to be true.

VI. And the said Frank J. Kane, having submitted and urged at said trial upon the said facts so admitted and found as aforesaid, the following propositions, attacking the constitutionality of said
101 act, and amendment thereto, viz:—

First. That the acts of the New Jersey Legislature for the violation of which this action is brought, being entitled "An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," approved April 12th, 1906, and the amendment of said act approved April 16th, 1908, viol

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e IV, Section VII, paragraph 12, of the Constitution of the of New Jersey, which ordains, that "Property shall be assessed xes under general laws, and by uniform rules according to its alue."

e fee or sum imposed and required by section 16 of said act of as amended by said act of 1908, which is required before the of automobiles can drive or use them on the public highways v Jersey, is in substance and effect a tax upon property. Under ct and amendment the imposition of said tax upon automobiles ulated as to the amount of tax, according to the horsepower of obiles, and not according to their true value. Moreover, by id act and amendment the said tax is placed upon automobiles and is not placed upon other personal property, whose situs xation is in New Jersey, by reason whereof, said tax so imposed d act and amendment is a taxation of property not by uniform rules, as required by said provision of said Constitution.

Moreover, said automobiles are so taxed by said act and amendment as aforesaid, although such tax is not imposed other personal property naturally belonging to the same class, as wagons and other vehicles used upon the highways, whereby, said act and amendment, said tax is arbitrary, unjust, and minatory, in making automobiles a class for said taxation and ding therefrom other property of the same or similar nature.

e said automobiles so taxed by said act and amendment whose for taxation is in New Jersey are also taxed and taxable under eneral laws of New Jersey, whereby the owners of automobiles uired to pay said tax and burden imposed by said act of 1906 mendment of 1908 are subjected to double taxation thereon, is an unjust and illegal taxation.

ond. The said act of 1906 and amendment of 1908 by impos- aid tax and burden upon the automobile of defendant who resident of New York, and whose automobile was not located w Jersey, or liable to be taxed by said State as personal prop- violates Article 1, Section 8, of the Constitution of the United s, which gives to the Congress power to regulate commerce g the several States. The defendant contends, that the re- ment of the payment of said fee for the registration of de- nt's automobile by said act of 1906 and its amendment of 1908, e said defendant may drive or use the same upon the high- of New Jersey, is a burden and tax upon Interstate Commerce olation of the constitution and laws of the United States regu- g Interstate Commerce passed by the Congress of the United States; and that the Legislature of New Jersey had no power or authority to enact said act of 1906 and amendment of 1908 which imposes such tax and burden on Interstate nerce and the Commerce and Intercourse of this defendant e State of New Jersey in going from the State of New York and through the State of New Jersey, to and into the State ennsylvania.

ird. The said act of 1906 and amendment thereto of 1908, quiring the payment of said fee for registration of defendant's

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said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, violates the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides, that, "No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The defendant contends, that the above provision of the Federal Constitution, is violated, in that the said act of 1906 and amendment thereto of 1908 by requiring from defendant the said fee for the registration of his said automobile and the registration thereof, as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is an unjust, and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

104 Fourth. The said act of 1906 and amendment thereto of 1908, in providing that every owner having a residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, constituting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section Sixteen of said act of 1906 as amended in said act of 1908, violates, the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth in that the said requirement of said act of 1906 as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey, without being required to file said instrument with the Secretary of State, and without being subject to said requirements provided in said sixteenth section of said act of 1906 as amended by the amendment thereto of 1908, as above set forth. This defendant contends, that there is no natural or just basis for classification in thus making such requirements of non-residents and not making the same requirement of residents of New Jersey, and that said act of 1906, and amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as resident of New York in favor of residents of New Jersey, and violates said provision of the Fourteenth Amendment.

105 Fifth. The evidence shows, that the said fees required and c

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lected for registration of automobiles by the said act of 1906 and amendment thereto, greatly exceeds all costs and expenses necessary or applicable for the execution and carrying out of the provisions of said acts as an exercise of the Police Power of the State; and that the fees required and collected thereby for licensing drivers of automobiles greatly exceed all such costs and expenses necessary or applicable for the execution and carrying out of said provisions of said acts as an exercise of the Police Power of the State.

Wherefore, this defendant contends, that said fees or sums required are a burden imposed for revenue and in substance and effect a tax upon property, and thereby opposed to the Constitution of New Jersey requiring that property shall be assessed for taxes under general laws, and by uniform rules, and according to its true value, and being such a tax is also a burden upon Interstate Commerce in violation of said Interstate Commerce clause in the Federal Constitution and is discriminatory against owners of automobiles in favor of owners of other property of substantially the same kind, in violation of said Fourteenth Amendment to the Federal Constitution.

VII. And the above-named Court thereupon held and adjudged that said propositions so submitted were unsound, and untenable upon said facts so admitted and found; that said act of 1906 and the amendments thereto were not in any respect a violation of the Constitution of the State of New Jersey or the Constitution
106 of the United States, but were in every respect constitutional and valid, and the Court further adjudged and decided and found that all the facts stipulated and above set forth were true, and that upon said facts so admitted and found, said Court further adjudged and decided that on the fifth day of October, 1908, said Frank J. Kane, then a resident of Woodhaven, Long Island, in the State of New York, did drive his automobile which was of thirty horsepower in the State of New Jersey and use his automobile on the public highways of said State of New Jersey by driving and using his said automobile upon said public highways from Fort Lee in the County of Bergen, in the State of New Jersey to, and upon a public highway in the City of Paterson, in the County of Passaic and State of New Jersey, known and designated as Washington Street, in transit to Delaware Water Gap as aforesaid, without having registered his said automobile, or applied to register the same, or paid the fee required therefor, or obtained any certificate or license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his true and lawful attorney upon whom all original process in any action or legal proceedings caused by the operation of his said automobile within the State of New Jersey, against him may be served, and therein agreeing that any original process against him shall be of the same force and effect as if served on him within this State, in violation of the Fifteenth and Sixteenth Sections of an Act of the Legislature of the State of New Jersey, entitled "An Act de-

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fining motor vehicles and providing for the registration of
107 the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations," and approved April 12th, 1906, and the amendment of said Act entitled "An Act to amend an act entitled 'An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations,' approved April 16, 1908," and the said Frank J. Kane was by the said Court convicted of having violated said Fifteenth and Sixteenth Sections of said act of 1906 and amendment thereto as aforesaid, within the intent and meaning thereof, and it was adjudged that he, the said Frank J. Kane, pay a fine of five dollars for the violation of said Fifteenth and Sixteenth Sections of said act and amendment thereto, which said fine was to be accounted for and paid and forwarded to the Commissioner of Motor Vehicles as provided by said act and amendment thereto.

VIII. That thereafter, and on the 29th day of October, 1908, a writ of certiorari was issued out of the Supreme Court of the State of New Jersey to James F. Carroll, the Recorder of the Recorder's Court of the City of Paterson, County of Passaic and State
108 of New Jersey for the review of said judgment of conviction upon the prayer of Frank J. Kane, praying that said judgment and conviction made against him as aforesaid might be set aside, and reversed and for nothing holden for the following reasons:

1. Because the acts of the New Jersey Legislature for the violation of which this action is brought, bring entitled "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violation," approved April 12th, 1906, and the amendment of said act approved April 16th, 1908, violate Article IV, Section VII, paragraph 12, of the Constitution of the State of New Jersey, which ordains, that "Property shall be assessed for taxes under general laws, and by uniform rules according to its true value."

2. Because, the fee or sum imposed and required by section 16 of said act of 1906 as amended by said Act of 1908, which is required before the owner of automobiles can drive or use them on the public highways of New Jersey, is in substance and effect a tax upon property; under said act and amendment the imposition of said tax upon automobiles is regulated as to the amount of tax, ac-

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cording to the horsepower of automobiles, and not according to their true value; moreover, by the said act and amendment the said tax is placed upon automobiles only, and is not placed upon
109 other personal property, whose situs for taxation is in New Jersey; by reason whereof, said tax so imposed by said act and amendment is a taxation of property not by uniform rules, as required by said provision of said Constitution.

3. Because, said automobiles are so taxed by said act and amendment as aforesaid, although such tax is not imposed upon other personal property naturally belonging to the same class, such as wagons and other vehicles used upon the highways, whereby, under said act and amendment, said tax is arbitrary, unjust and discriminatory, in making automobiles a class for said taxation, and excluding therefrom other property of the same or similar nature.

4. Because, the said automobiles so taxed by said act and amendment whose situs for taxation is in New Jersey are also taxed and taxable under the general tax laws of New Jersey, whereby the owners of automobiles if required to pay said tax and burden imposed by said act of 1906 and amendment of 1908 are subjected to double taxation thereon, which is an unjust and illegal taxation.

5. Because, the said act of 1906 and amendment of 1908, by imposing said tax and burden upon the automobile of defendant who was a resident of New York, and whose automobile was not located in New Jersey, or liable to be taxed by said State as personal property, violates Article 1, Section 8, of the Constitution of the United States, which gives to the Congress power to regulate commerce among the several States. The defendant contends, that the requirement of the payment of said fee for the registration of defendant's automobile by said act of 1906 and its amend-
110 ment of 1908, before said defendant may drive or use the same upon the highways of New Jersey, is a burden and tax upon Interstate Commerce, in violation of the Constitution and laws of the United States regulating Interstate Commerce passed by the Congress of the United States; and that the Legislature of New Jersey had no power or authority to enact said act of 1906 and amendment of 1908, which imposes such tax and burden on Interstate Commerce and the Commerce and Intercourse of this defendant in the State of New Jersey in going from the State of New York, into and through the State of New Jersey, to and into the State of Pennsylvania.

6. Because, the said act of 1906 and amendment thereto of 1908, in requiring the payment of said fee for registration of defendant's said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, violates the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides, that, "No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The defendant contends, that the above provision of the Federal

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Constitution is violated, in that the said act of 1906 and the amendment thereto of 1908 by requiring from defendant the said fee for the registration of his said automobile and the registration
111 thereof, as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is an unjust, and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

7. Because, the said act of 1906 and amendment thereto of 1908, in providing that every owner having a residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, constituting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section Sixteen of said Act of 1906 as amended in said act of 1908, violates the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth, in that the said requirement of said act of 1906, as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey without being required to file said instrument
112 with the Secretary of State, and without being subject to said requirements provided in said Sixteenth section of said act of 1906 as amended by the amendment thereto of 1908 as above set forth. This defendant contends, that there is no natural or just basis for classification in thus making such requirement of non-residents and not making the same requirement of residents of New Jersey, and that said act of 1906, and amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as resident of New York in favor of residents of New Jersey, and violates said provision of the Fourteenth amendment.

8. Because, the facts stipulated and found by said Recorder show, that the said fees required and collected for registration of automobiles by the said act of 1906 and amendment thereto, greatly exceed all costs and expenses necessary or applicable for the execution and carrying out of the provisions of said acts as an exercise of the Police Power of the State; and that the fees required and collected thereby for licensing drivers of automobiles greatly exceed all such costs and expenses necessary or applicable for the execution and carrying out of said provisions of said acts as an exercise of the Police Power of the State.

Wherefore, this defendant contends, that said fees or sums required are a burden imposed for revenue and in substance and

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effect a tax upon property, and thereby opposed to the Constitution of New Jersey requiring that property shall be assessed for taxes under general laws, and by uniform rules, and according to
113 its true value, and being such a tax is also a burden upon Interstate Commerce in violation of said Interstate Commerce clause in the Federal Constitution and is discriminatory against owners of automobiles in favor of owners of other property of substantially the same kind, in violation of said Fourteenth Amendment to the Federal Constitution.

9. Because, the said act and amendment and the imposition of said fee for registration of automobiles, and the other requirements made upon owners of automobiles by said act, before they are permitted to drive or use the same upon the highways of New Jersey are in divers other respects illegal, unjust and oppressive.

IX. And the said writ of certiorari coming on before the Supreme Court to be heard at the General Term, 1910, and the Court having examined the pleadings and considered the evidence, it was ordered by said Court that the judgment of conviction of Frank J. Kane as aforesaid, in the Recorder's Court of the City of Paterson be affirmed; that said order was entered on the 12th day of September, 1910.

X. That thereafter, and on the 15th day of September, 1910, a writ of error issued out of the New Jersey Court of Errors and Appeals, directed to the Supreme Court of the State of New Jersey, for the review of the above cause of action, in order that the records and proceedings therein might be inspected by said Court, and said Court might cause to be further done therein what *was* right and according to law and custom of New Jersey should be done.

XI. Thereafter, on the 4th day of November, 1910, the
114 said Frank J. Kane by Griggs and Harding his attorneys, filed in said New Jersey Court of Errors and Appeals an assignment of errors specifying as errors the following:

First. That by the judgment aforesaid of the Supreme Court, the judgment of conviction of the Recorder's Court of the City of Paterson of the said Frank J. Kane brought up before the Supreme Court by its writ of certiorari was affirmed with costs and held valid, whereas, by the law of the land the said judgment of conviction should have been held invalid and void, reversed and set aside with costs to the said prosecutor in certiorari.

Second. That the said Supreme Court by its judgment aforesaid dismissed the said writ of certiorari, whereas the same should have been sustained.

Third. That the said Supreme Court by its judgment aforesaid held and decided that the acts of the New Jersey Legislature for the violation of which this action is brought, being entitled "An Act defining motor vehicles and providing for the registration of the same and licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violation," approved April

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12th, 1906, and the amendment of said act approved April 16th 1908, do not violate Article IV, Section VII, paragraph 12 of the Constitution of the State of New Jersey, which ordains tha "Property shall be assessed for taxes under general laws, and
115 by the uniform rules according to its true value," whereas the same should have been held unconstitutional and void

Fourth. That the said Supreme Court by its judgment aforesaid erroneously held and decided that the fee or sum imposed and required by Section 16 of said act of 1906 as amended by said act of 1908, which is required before the owner of automobiles can drive or use them on the public highways of New Jersey, is not in substance and effect a tax upon property; and that said Supreme Court also erroneously held and decided that, although under said act and amendment the imposition of said tax is placed upon automobiles only and is not placed upon other personal property whose situs for taxation is in New Jersey, said tax so imposed by said act and amendment is a taxation of property by uniform rules as required by said provision of the said constitution.

Fifth. That the said Supreme Court by its judgment aforesaid erroneously held and decided that, although said automobiles are so taxed by said act and amendment as aforesaid, and although such tax is not imposed upon other personal property naturally belonging to the same class, such as wagons and other vehicles used upon the highways, said tax is not arbitrary, unjust and discriminatory, in making automobiles a class for said taxation and excluding them from other property of the same or similar nature.

Sixth. That the said Supreme Court by its Judgment aforesaid erroneously held and decided that, although the said automobiles taxed by said act and amendment whose situs for taxation
116 is in New Jersey are also taxed and taxable under the general tax laws of New Jersey, and the owners of automobiles required to pay said tax and burden imposed by said act of 1906 and amendment of 1908 are subjected to double taxation thereof the same is not an unjust and illegal taxation.

Seventh. That the said Supreme Court by its judgment aforesaid, erroneously held and decided that, although the said act of 1906 and amendment of 1908, by imposing said tax and burden upon the automobile of defendant who was a resident of New York and whose automobile was not located in New Jersey, or liable to be taxed by said State as personal property, does not violate Article 1, Section 8, of the Constitution of the United States, which gives to the Congress power to regulate commerce among the several states; and erroneously decided that the requirement of the payment of said fee for the registration of defendant's automobile by said act of 1906 and its amendment of 1908, before said defendant may drive or use the same upon the highways of New Jersey, is not a burden and tax upon Interstate Commerce, in violation of the Constitution and Laws of the United States regulating Interstate Commerce passed by the Congress of the United States and that the Legislature of New Jersey had power or authority to enact said act of 1906 and amendment of 1908, and did not impose such

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tax and burden on Interstate Commerce and the Commerce and Intercourse of this defendant in the State of New Jersey in going from the State of New York, into and through the State of New Jersey, to and into the State of Pennsylvania.

117 Eighth. That the said Supreme Court by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in requiring the payment of said fee for registration of defendant's said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, does not violate the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides that, "No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The said Supreme Court by its judgment aforesaid, erroneously held and decided that the above provision of the Federal Constitution is not violated, in that the said act of 1906 and amendment thereto of 1908 by requiring from defendant the said fee for the registration of his said automobile and the registration thereof as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is not an unjust and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

Ninth. That the said Supreme Court by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in providing that every owner having a

118 residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, constituting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section Sixteen of said act of 1906 as amended in said act of 1908, does not violate the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth, in that the said requirement of said act of 1906, as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey without being required to file said instrument with the Secretary of State, and without being subject to said requirements provided in said sixteenth section of said act of 1906 as amended by the amendment thereto of

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said act greatly exceed the costs and expenses necessary to the
ing out of said act as an exercise of the police power of the
Said arguments made by your petitioner were overruled
the Courts. Such decisions and said Courts and Judges and e
them denied to your petitioner a title right, privilege and imm
held by your petitioner under the Constitution of the United
Wherefore your petitioner prays that a writ of error may
and that he may be allowed to bring up for review before t
preme Court of the United States, the said order and
123 ment of said New Jersey Court of Errors and Appeal
that your petitioner may have such other and further
in the premises as may be just.
And your Petitioner will ever pray.

FRANK J. KANE, *Petitioner.*
GRIGGS & HARDING,
Petitioner's Attorneys, 152 *Market Street, Paterson, New Y*
CHARLES THADDEUS TERRY,
Petitioner's Attorney, 100 *Broadway, Borough of Manhattan, City of New Y*

JOHN W. GRIGGS,
CHARLES THADDEUS TERRY,
Of Counsel.

STATE OF NEW YORK,
County of Queens, ss:

Frank J. Kane being duly sworn, deposes and says: I a
petitioner in the foregoing petition, and the foregoing peti
true of my own knowledge, except as to the matters therein
to be alleged on information and belief, and as to those ma
believe it to be true.

FRANK J. KA

Sworn to before me this 9th day of May, 1914.

[Seal of Charles F. Lynch, Notary Public, Queens Count

CHARLES F. LYNCH,
Notary Public, Queens Co., N

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124 *Recapitulation by Months for* 1906.

No. 1.

For month of—	Reg.	Amt.	Lic.	Amt.	Fines.	Amt. paid out.	Paid State Treas.
May	2,434	8,739.00	1,881	2,526.00	...	329.83	10,935.17
June	4,185	14,677.00	4,542	5,831.00	...	719.33	19,788.67
July	3,227	10,469.00	4,390	5,798.00	...	1,019.08	15,247.92
Aug.	1,314	4,398.00	1,614	2,145.00	585	612.33	6,515.67
Sept.	938	2,984.00	1,119	1,524.00	95	616.58	3,986.42
Oct.	754	2,457.00	800	1,066.00	156	481.58	3,197.42
Nov.	583	1,963.00	582	865.00	100	518.78	2,408.22
Dec.	324	1,076.00	341	454.00	55	440.58	1,144.42
	13,759	46,763.00	15,269	20,209.00	991	4,738.09	63,224.91

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No. 2.

For month of—	Reg.	Amt.	Lic.	Amt.	Fines.	Fees paid out.	Total.
Jan.	283	1,121.00	212	329	111.00	367.83	1,193.17
Feb.	203	786.00	156	227	445.52	366.68	1,092.42
March	775	2,849.00	577	836	300.00	443.58	3,250.92
Apr.	1,531	5,166.00	1,206	1,757	334.00	519.58	6,737.42
May	2,661	9,307.00	2,275	3,245	236.00	726.58	12,061.42
June	3,246	11,157.25	3,294	4,579	560.50	836.58	15,406.17
July	4,111	13,975.00	4,904	6,726	1,661.70	1,103.33	21,259.37
Aug.	1,874	6,221.00	2,205	3,050	789.00	686.33	9,373.67
Sept.	1,138	3,868.00	1,236	1,731	496.00	589.23	5,505.67
Oct.	1,040	3,676.00	1,048	1,633	500.80	560.33	5,249.47
Nov.	617	2,301.00	664	970	105.00	483.25	2,892.75
Dec.	318	1,167.00	308	446	391.00	385.58	1,618.42
	17,619	61,594.25	10,085	25,529	5,930.50	7,068.38	85,694.87

Less drafts drawn by Township of So. Orange, returned unpaid—
Fines 290.50

5,640.00

126

No. 3.

Year.	Reg.	Amt.	Lic.	Amt.	Fines.	Ex. fees.	Paid to treas.
1906	13,759	46,763.00	15,269	20.209	991.00	4,738.09	63,224.91
	17,619	61,594.25	18,085	25,529	5,640.00	7,068.38	85,694.87

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127 No. 4.

	Jan. 1 to May 1, 1908.	May 1 to Oct. 1.
Commissioner's Salary	$500.00	$625.00
Chief Inspector's Salary	500.00	635.00
Inspector's Expenses	212.35	1,046.08
Inspector's Salary	525.00	2,955.00
Clerical	1,341.83	3,321.29
Expressage, Postage, etc.	488.90	1,646.54
Stationery	564.75	921.12
Expense of Equipment	213.15	1,046.08
Markers	.....	8,818.20
Purchase of Motor Cycle and Exp'n's	.....	1,776.70
	$4,345.98	$22,781.01

128 I allow a writ of error as above prayed.
August 18, 1914.

MAHLON PITNEY,
Associate Justice Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. In the matter of the petition of Frank J. Kane, plaintiff in error, against State of New Jersey, Henry Titus, Prosecutor, defendant in error. Petition for writ of error. Charles Thaddeus Terry, 100 Broadway, New York City, and Griggs & Harding, 152 Market Street, Paterson, N. J., attorneys for plaintiff in error.

129 Supreme Court of the United States.

FRANK J. KANE, Plaintiff in Error,
against
STATE OF NEW JERSEY, HENRY TITUS, Prosecutor, Defendant in Error.

And now comes Frank J. Kane, plaintiff in error and makes and files this, his assignment of errors:

First. That by the judgment aforesaid of the New Jersey Court of Errors and Appeals, the judgment and conviction of the Recorder's Court of the City of Paterson, brought up before the Supreme Court by writ of certiorari was affirmed with costs and held valid, whereas by the law of the land the said judgment of conviction should have been held invalid, and reversed and set aside with costs to said plaintiff in error.

Second. That said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that, although the said act of 1906 and amendment of 1908 by imposing said tax and burden upon the automobile of defendant who was a resident of New York, and whose automobile was not located in

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New Jersey, or liable to be taxed by said State as personal property, does not violate Article 1, Section 8, of the Constitution of the United States, which gives to the Congress power to regulate commerce among the several states; and erroneously decided that the requirement of the payment of said fee for the registration
130 of defendant's automobile by said act of 1906 and its amendment of 1908, before said defendant may drive or use the same upon the highways of New Jersey, is not a burden and tax upon Interstate Commerce, in violation of the Constitution and laws of the United States regulating Interstate Commerce passed by the Congress of the United States and that the Legislature of New Jersey had power or authority to enact said act of 1906 and amendment of 1908, and did not impose such tax and burden on Interstate Commerce and the Commerce and Intercourse of this defendant in the State of New Jersey in going from the State of New York, into and through the State of New Jersey, to and into the State of Pennsylvania.

Third. That the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in requiring the payment of said fee for registration of defendant's said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, does not violate the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides that, "No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty of property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that the above pro-
131 vision of the Federal Constitution is not violated, in that the said act of 1906 and amendment thereto of 1908 by requiring from defendant the said fee for the registration of his said automobile and the registration thereof, as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is not an unjust and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

Fourth. That the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in providing that every owner having a residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, constituting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original proces

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against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section sixteen of said act of 1906 as amended in said act of 1908, does not violate the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth, in that the said requirement of said act of 1906, as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an
132 unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey without being required to file said instrument with the Secretary of State, and without being subject to said requirements provided in said sixteenth section of said act of 1906 as amended by the amendment thereto of 1908 as above set forth. The said Supreme Court by its judgment aforesaid, erroneously held and decided that there is a natural and just basis for classification in thus making such requirements of non-residents and not making the same requirements of residents of New Jersey, and that said act of 1906, and amendment thereto of 1908, is not an unjust and arbitrary discrimination against this defendant as resident of New York in favor of residents of New Jersey, and does not violate said provision of the Fourteenth Amendment of the Constitution of the U. S. and does not violate Section 2, Article IV of the Constitution of the U. S.

Fifth. That the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that the facts stipulated and found by said Recorder show, that the said fees required and collected for registration of automobiles by the said act of 1906 and amendment thereto, do not greatly exceed all costs and expenses necessary or applicable for the execution and carrying out of the provisions of said acts as an exercise of the Police Power of the State; and erroneously decided that the fees required and collected thereby for licensing drivers of automobiles do not greatly exceed all such costs and expenses necessary or applicable for the execution and carrying out of said provisions of said acts as
133 an exercise of the police Power of the State.

Wherefore, the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that said fees or sums required are not a burden imposed for revenue and in substance and effect a tax upon property, and thereby opposed to the Constitution of New Jersey requiring that property shall be assessed for taxes under general laws, and by uniform rules, and according to its true value, and being such a tax is not a burden upon Interstate Commerce in violation of said Interstate Commerce clause in the Constitution and is not discriminatory against owners of automobiles in favor of owners of other property of substantially the same kind, in violation of said Fourteenth Amendment to the Federal Constitution, and Section 2, Article IV of said Federal Constitution.

Wherefore the plaintiff in error prays that the judgment aforesaid, by reason of said errors and of other errors appearing in the

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record and proceedings aforesaid, may be reversed, annulled an
for nothing holden, and that the plaintiff in error may be restored t
all things which he has lost by occasion of said judgment.

Dated, May 1st, 1914.

CHARLES THADDEUS TERRY,
GRIGGS & HARDING,
Attorneys for Plaintiff in Error.

134 [Endorsed:] Supreme Court of the United States. In th
Matter of the Petition of Frank J. Kane, Plaintiff in err
against State of New Jersey, Henry Titus, Prosecutor, Defendant i
error. Assignment of Errors. Charles Thaddeus Terry, 100 Broa
way, New York City and Griggs & Harding, 152 Market Stre
Paterson, N. J., Attorneys for plaintiff in error.

135 Supreme Court of the United States.

FRANK J. KANE, Plaintiff in Error,
against
STATE OF NEW JERSEY, HENRY TITUS, Prosecutor, Defendant
Error.

And now comes Frank J. Kane, plaintiff in error, and prays
a reversal of the judgment of the New Jersey Court of Errors a
Appeals in the action and proceeding brought by Henry Tit
Prosecutor, against Frank J. Kane, a defendant, which judgm
was entered in the office of the Clerk of the New Jersey Court
Errors and Appeals on the 6th day of March, 1914, and also pr
for the reversal of the order of affirmance of said action by the N
Jersey Court of Errors and Appeals, entered in the office of the Cl
of said New Jersey Court of Errors and Appeals on the 6th day
March, 1914, and also prays for a reversal of the order of the
preme Court of the State of New Jersey, dismissing a writ of cer
rari in said cause, and entered in the office of the Clerk of the
preme Court on the 12th day of September, 1910, and also prays fo
reversal of the jujdgment of conviction in said action entered in
office of the Clerk of the Recorder of the City of Paterson, in
County of Passaic and State of New Jersey, in the said cause on
26th day of October, 1908.

Dated May 1st, 1914.

CHARLES THADDEUS TERRY,
GRIGGS & HARDING,
Attorneys for Frank J. Kan

136 [Endorsed:] Supreme Court of the United States. Fr
J. Kane, Plaintiff in Error against State of New Jersey, He
Titus, Prosecutor, Defendant in Error. Prayer for Reve
Charles Thaddeus Terry, 100 Broadway, New York City and Gr
& Harding, 152 Market Street, Paterson, N. J.

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137 American Surety Company of New York. Capital and Surplus over $6,000,000. Company's Office Building, 100 Broadway, New York. 65802.

In the Supreme Court of the United States.

FRANK J. KANE, Plaintiff in Error,
against
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor, Defendant in Error.

Know all Men by These Presents, That we, the American Surety Company of New York, a corporation organized and existing under the Laws of the State of New York, and having an office and principal place of business at No. 100 Broadway, in the County of New York, City and State of New York, are held and firmly bound unto The State of New Jersey, Henry Titus, Prosecutor and Defendant-in-Error herein, in the sum of One Thousand Dollars ($1,000.), in lawful money of the United States; to be paid to the said The State of New Jersey, Henry Titus, Prosecutor, its certain attorneys or assigns; for which payment, well and truly to be made, we bind ourselves, our successors and assigns, firmly by these presents.

Sealed with our corporate seal and dated the 16th day of October, 1914.

Whereas, Frank J. Kane, Plaintiff-in-Error, has prosecuted a Writ of Error to the Supreme Court of the United States to reverse the order of the New Jersey Court of Errors and Appeals, entered herein on the 6th day of March, 1914, affirming an order of affirmance of the Supreme Court of the State of New Jersey, and entered herein on the 12th day of September, 1910.

Now, Therefore, the condition of this obligation is such, That if said Frank J. Kane shall prosecute said Writ of Error to effect and answer all damages and costs if he shall fail to make his plea good, then this obligation to be void; otherwise to remain in full force and virtue.

[L. S.] AMERICAN SURETY COMPANY
OF NEW YORK,
By MARSHALL L. BROWER,
Resident Vice-President.

Sealed and delivered in the presence of:

—— ——.

Attest:—
GEORGE R. CROSBY,
Resident Assistant Secretary.

138 STATE OF NEW YORK,
County of New York, ss:

On this 16th day of Oct., 1914, before me personally appeared Marshall L. Brower, Resident Vice President of the American Surety

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Company of New York, to me known, who, being by me duly sw
did depose and say: that he resides in the City of New York, N.
that he is the Resident Vice President of the American Surety C
pany of New York, the Corporation described in and which exec
the above instrument; that he knows the corporate seal of said
poration; that the seal affixed to said instrument is such corp
seal; that it was so affixed by order of the Board of Trustees of
Corporation, and that he signed his name thereto by like order;
that the liabilities of said Corporation do not exceed its asse
ascertained in the manner provided by law. And the said Mar
L. Brower further said that he is acquainted with George R. C
and knows him to be one of the Resident Assistant Secretari
said Corporation; that the signature of said George R. Crosby
scribed to the said instrument is in the genuine handwriting o
said George R. Crosby and was thereto subscribed by the like
of the said Board of Trustees, and in the presence of him the
Marshall L. Brower, Resident Vice President.

[L. S.] E. A. FARRELL,
Notary Public, New York County, No. 10

Register's Office, New York County, No. 5015.
Certificate filed in all counties.

139 STATE OF NEW YORK,
County of New York, ss:

George R. Crosby being duly sworn, says: That he is a Res
Assistant Secretary of the American Surety Company of New Y
that said Company is a corporation duly created, existing an
gaged in business as a surety company under and by virtue o
laws of the State of New York, and has duly complied with a
requirements of the laws of said State applicable to said Com
and is duly qualified to act as surety under such laws; that
Company has also duly complied with and is duly qualified
as surety under the Act of Congress of August 13, 1894, en
"An Act relative to recognizances, stipulations, bonds and u
takings and to allow certain corporations to be accepted as s
thereon," as amended; that the within is a true copy of th
statement of the assets and liabilities of said Company as ren
pursuant to section 4 of said Act of Congress; that said statem
true and that said American Surety Company of New York is
more than $5,000,000 over and above all its debts and liabilitie
such exemptions as may be allowed by law.

GEORGE R. CROSB

Subscribed and sworn before me this 16th day of Oct., 1914

[L. S.] E. A. FARRELL,
Notary Public, New York County, No. 1

Register's Office, New York County, No. 5015.
Certificate filed in all counties.

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American Surety Company of New York.

Incorporated April 14, 1884.

General Offices, 100 Broadway.

Financial Statement, June 30, 1914.

Company's Office Building, 100 Broadway, New York.

Resources.

Real Estate,		
Home Office Building and Land, unencumbered	$3,000,000.00	
N. Y. City Water Front unencumbered	166,047.91	$3,166,047.91
Stocks and Bonds, Market Value.....		3,936,655.00
Mortgage and Collateral Loans and Accounts Receivable		187,618.86
Cash in Banks and Offices		975,204.62
Premiums in Course of Collection....		857,782.50
Accrued Interest and Rents		49,287.98
		$9,172,596.87

Liabilities.

Capital Stock	$5,000,000.00	
Surplus		818,393.08
Reserve for Re-Insurance		2,253,422.97
Reserve for Contingent Claims		861,062.18
Reserve for Uncollectible Premiums ..		100,000.00
Reserve for Contingent Expenses, less Taxes paid in advance		74,473.42
Reinsurances and Bills and Accounts Payable, not due		65,245.22
		$9,172,596.87

140 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

The first meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Tuesday, January 20, 1914, at eleven o'clock A. M.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York:

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 9,

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1913, for the purpose of nominating * * * officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for

Place.	Resident Vice-Presidents.	Resident Assistant Secretaries.
New York, N. Y.	Marshall L. Brower	Marshall L. Brower
	A. E. Cotterell	William H. Bishop
	William M. Tomlins, Jr.	A. E. Cotterell
	Lester S. Moore	Chas. S. Waterbury
	Joseph A. Sinn	Daniel Stewart
	William H. Bishop	E. D. Sadler
		George R. Crosby
		W. H. E. Reinecke
		Joseph A. Sinn
		E. J. Sabater
		Louis Papen

"Whereupon, it was resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present, for the members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, Officers and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

STATE OF NEW YORK,
County of New York, ss:

I, W. H. Riley, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

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Given under my hand and the seal of the Company, at the City of New York, this 26th day of January, 1914.

[L. S.] (Signed) W. H. RILEY,
Assistant Secretary.

141 [Endorsed:] In the Supreme Court of the United States. Frank J. Kane, Plaintiff in Error, against The State of New Jersey, Henry Titus, Prosecutor, Defendant in Error. Bond on Writ of Error. Attorney for —. I approve of the within undertaking both as to form and sufficiency of the surety.

142 STATE OF NEW JERSEY:

New Jersey Court of Errors and Appeals.

I, David S. Crater, Clerk of the Court of Errors and Appeals of the State of New Jersey, do hereby certify that there was lodged with me as such Clerk, in the case of Frank J. Kane, Plaintiff in Error, vs. The State of New Jersey, Henry Titus, Prosecutor, Defendant in Error, on the Twenty-ninth day of October, Nineteen hundred and fourteen, the original Bond, of which a copy is herewith set forth, and that on said Twenty-ninth day of October, Nineteen hundred and fourteen, there was lodged with me as such Clerk, two copies of the Writ of Error, as herein set forth, one for the Defendant and one for my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Trenton, this Twenty-ninth day of October, A. D. 1914.

[Seal of the Secretary of the State of New Jersey.]

DAVID S. CRATER,
Clerk of the Court of Errors and Appeals.

143 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Errors and Appeals of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Frank J. Kane, Plaintiff in Error, and the State of New Jersey, Defendant in Error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the

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United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was
144 claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Frank J. Kane as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventeenth day of October, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by—
MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

145 [Endorsed:] Supreme Court of the United States, October Term, 1914. Frank J. Kane, Plaintiff in Error, vs. The State of New Jersey, Henry Titus, Prosecutor, Defendant- in Error. Writ of Error.

146 UNITED STATES OF AMERICA, *ss:*

To the State of New Jersey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Errors and Appeals of the State of New Jersey, wherein Frank J. Kane is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, this seventeenth day of October, in the year of our Lord one thousand nine hundred and fourteen.

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

COPY BOUND CL

147 On this 29th day of October, in the year of our Lord one thousand nine hundred and fourteen, personally appeared Edward Ward McMahon before me, the subscriber, and makes oath that he delivered a true copy of the within citation to the Attorney General of the State of New Jersey by delivering the same at the office of said Attorney General at the State House, Trenton, New Jersey, to Herbert Boggs, Assistant Attorney General, on the 29th day of October, 1914.

EDWARD WARD McMAHON.

Sworn to and subscribed the 28th day of October, A. D. 1914.

FRED P. HEMPHILL,
Notary Public of N. J.

148 STATE OF NEW JERSEY:

New Jersey Court of Errors and Appeals.

FRANK J. KANE, Plaintiff in Error,
vs.
THE STATE OF NEW JERSEY, HENRY TITUS, Prosecutor, Defendant in Error.

I, David S. Crater, Clerk of the Court of Errors and Appeals of the State of New Jersey, hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above-entitled cause.

And I further certify that in pursuance of Writ of Error heretofore filed in this cause, I now herewith transmit the said transcript, together with the original Writ of Error and the original Citation, to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Trenton, this twenty-ninth day of October, A. D. 1914.

[Seal of the Secretary of the State of New Jersey.]

DAVID S. CRATER,
Clerk of the Court of Errors and Appeals.

Endorsed on cover: File No. 24,436. New Jersey Court of Errors and Appeals. Term No. 282. Frank J. Kane, plaintiff in error, vs. The State of New Jersey. Filed November 13th, 1914. File No. 24,436.

SE IN CENTER

Supreme Court of the United States,

FRANK J. KANE,
Plaintiff in Error,

vs.

THE STATE OF NEW JERSEY,
Defendant—
Defendant in Error.

In Writ of Error to the Court of Errors and Appeals of the State of New Jersey.

BRIEF FOR PLAINTIFF IN ERROR.

I.

Statement of Facts.

Frank J. Kane, who prosecutes this suit, was convicted in the Recorder's Court of the City of Paterson of violating the provisions of the Automobile Law of 1908 (P. L., 1908, page 613) by driving his automobile on the public highways of New Jersey without having registered the same, or paid the fee required therefor, or obtained any certificate or license therefor, and without having filed with the Secretary of State of New Jersey a duly executed instrument constituting the said Secretary of State his attorney upon whom all original process in any action or legal proceeding caused by the operation of his said automobile within the State of New Jersey against him may be served, in violation of the 15th and 16th sections of the act aforesaid.

On the trial of the case before the Recorder it was stipulated by the attorney for the plaintiff in error and the Attorney General representing the State of New Jersey that on October 5, 1908, Frank J. Kane, the plaintiff in error, was a resident of the State of New York and that being such resident on said day he drove his automobile, which was of thirty horse power, in the State of New Jersey, and used it on the public highways of said state by driving it upon said public highways from Fort Lee in the County of Bergen to the City of Paterson; that at that time the plaintiff in error was then going on his way and driving and using his automobile on the highways of New Jersey in going from the City of Paterson to the Delaware Water Gap in the State of Pennsylvania, having come from Fort Lee and having reached the City of Paterson; and that while upon Washington Street in said City of Paterson on his way to the Delaware Water Gap he was arrested upon the complaint made in this case.

The said Frank J. Kane was duly licensed under the laws of New Jersey to drive an automobile of thirty horse power upon any public highways in the State of New Jersey, but had not applied for or taken out any license for his said automobile and had not filed with the Secretary of State a power of attorney in accordance with the directions of Section 16 of said act (Stipulation, printed case, pages 22 to 30).

The judgment of the Recorder having been affirmed by the Supreme Court of the State of New Jersey, and the judgment of affirmance of the said Supreme Court having been affirmed by the Court of Errors and Appeals of the State of New Jersey, the plaintiff secured a writ of error in this

court to review the judgment of affirmance of the Court of Errors and Appeals of the State of New Jersey.

II.

Assignment of Errors.

The plaintiff assigns for errors here as he did in substance in the courts below:

> "*First.*—That by the judgment aforesaid of the New Jersey Court of Errors and Appeals the judgment and conviction of the Recorder's Court of the City of Paterson, brought up before the Supreme Court by writ of certiorari was affirmed with costs and held valid, whereas by the law of the land the said judgment of conviction should have been held invalid, and reversed and set aside with costs to said plaintiff in error.
>
> *Second.*—That said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that, although the said act of 1906 and amendment of 1908 by imposing said tax and burden upon the automobile of defendant who was a resident of New York, and whose automobile was not located in New Jersey, or liable to be taxed by said State as personal property, does not violate Article 1, Section 8, of the Constitution of the United States, which gives to the Congress power to regulate commerce among the several states; and erroneously decided that the requirement of the payment of said fee for the registration of

defendant's automobile by said act of 1906 and its amendment of 1908, before said defendant may drive or use the same upon the highways of New Jersey, is not a burden and tax upon Interstate Commerce, in violation of the Constitution and laws of the United States regulating Interstate Commerce passed by the Congress of the United States and that the Legislature of New Jersey had power or authority to enact said act of 1906 and amendment of 1908, and did not impose such tax and burden on Interstate Commerce and the Commerce and Intercourse of this defendant in the State of New Jersey in going from the State of New York, into and through the State of New Jersey, to and into the State of Pennsylvania.

Third.—That the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in requiring the payment of said fee for registration of defendant's said automobile and the registration thereof, before permitting defendant to drive or use the same upon the public highways of New Jersey, does not violate the Fourteenth Amendment of the Constitution of the United States, the first section of which amendment provides that, "No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The said New Jersey Court of Errors and Appeals by its judgment aforesaid, errone-

ously held and decided that the above provision of the Federal Constitution is not violated, in that the said act of 1906 and amendment thereto of 1908 by requiring from defendant said fee for the registration of his said automobile and the registration thereof, as aforesaid, and not making any such requirement of the owners of other personal property of substantially the same nature with reference to its use of the highways of New Jersey, is not an unjust and arbitrary classification and discrimination against the defendant in favor of such other owners of property of substantially the same nature.

Fourth.—That the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that the said act of 1906 and amendment thereto of 1908, in providing that every owner having a residence outside of the State of New Jersey shall file with the Secretary of State of New Jersey a duly executed instrument, constituting the said Secretary of State and his successors in office, the true and lawful attorney upon whom all original process in any action or legal proceeding caused by the operation of his registered automobile, within New Jersey, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within the State, as provided in Section Sixteen of said act of 1906 as amended in said act of 1908, does not violate the said Fourteenth Amendment to the Constitution of the United States, which provides as hereinbefore set forth, in that the said requirement

of said act of 1906 as provided in said Section Sixteen thereof as amended by the said amendment thereto of 1908, is an unjust and arbitrary discrimination against this defendant as a non-resident of New Jersey, and who is a resident of New York, in favor of the residents of New Jersey, who are permitted to drive and use their automobiles upon the highways of New Jersey without being required to file said instrument with the Secretary of State, and without being subject to said requirements provided in said sixteenth section of said act of 1906 as amended by the amendment thereto of 1908 as above set forth. The said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that there is a natural and just basis for classification in thus making such requirements of non-residents and not making the same requirements of residents of New Jersey, and that said act of 1906, and amendment thereto of 1908 is not an unjust and arbitrary discrimination against this defendant as resident of New York in favor of residents of New Jersey, and does not violate said provisions of the Fourteenth Amendment of the Constitution of the U. S. and does not violate Section 2, Article IV of the Constitution of the U. S.

Fifth.—That the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that the facts stipulated and found by said Recorder show, that the said fees required and collected for registration of automobiles by the said act of 1906 and amendment thereto, do not greatly exceed all costs and expenses

necessary or applicable for the execution and carrying out of the provisions of said acts as an exercise of the Police Power of the State; and erroneously decided that the fees required and collected thereby for licensing drivers of automobiles do not greatly exceed all such costs and expenses necessary or applicable for the execution and carrying out of said provision of said acts as an exercise of the Police Power of the State.

Wherefore, the said New Jersey Court of Errors and Appeals by its judgment aforesaid, erroneously held and decided that said fees or sums required are not a burden imposed for revenue and in substance and effect a tax upon property, and thereby opposed to the Constitution of New Jersey requiring that property shall be assessed for taxes under general laws, and by uniform rules, and according to its true value, and being such a tax is not a burden upon Interstate Commerce in violation of said Interstate Commerce clause in the Constitution and is not discriminatory against owners of automobiles in favor of owners of other property of substantially the same kind, in violation of said Fourteenth Amendment to the Federal Constitution, and Section 2, Article IV of said Federal Constitution."

III.

The motor vehicle laws of New Jersey which the plaintiff in error contends is unconstitutional.

"Part IV.—The Operation of Motor Vehicles.

15.—No person shall drive a motor vehicle, the owner of which vehicle shall not have complied with the provisions of this act concerning the proper registration and identification of the same; nor shall any person drive a motor vehicle which shall display on the front or back thereof a fictitious number, or a number other than that designated for such motor vehicle in the New Jersey registration certificate of such motor vehicle.

This section shall not apply to the owners or drivers of automobiles licensed pursuant to subdivision three of Section sixteen of this act, but such automobiles licensed under said section shall at all times display on the back thereof the registration number of said automobile under the laws of the State in which the business of the owner shall be conducted, as provided in the said section, and no other number shall be required or shall be displayed upon the said automobile.

16.—(1) Every resident of this State and every non-resident, whose automobile shall be driven in this State, shall, before using such vehicle on the public highways, register the same, and no motor vehicle shall be driven unless so registered. Every registration shall expire and the certificate thereof become void on the thirty-first of December of each year; provided, it may be lawful for any automobile

duly registered to operate under said registration certificate for a period not exceeding thirty-one days after the expiration of said registration certificate. Such registration shall be made in the following manner: A statement in writing shall be made to the Commissioner of Motor Vehicles, or his lawful agent, containing the name and address of such owner, together with a brief description of the character of such automobile, including the name of the maker and the manufacturer's number, and the rated horse-power. The applicant shall pay the Commissioner of Motor Vehicles for each registration a fee of three dollars for automobiles of the first class; five dollars for the second class, and ten dollars for the third class. Automobiles of ten horsepower or less shall be of the first class; from eleven to twenty-nine horsepower, inclusive, of the second class, and of thirty horsepower or more, of the third class. The Commissioner of Motor Vehicles shall issue for each automobile so registered a certificate, properly numbered, stating that such automobile is registered in accordance with law, and shall cause the name of such owner, with his address and the number of his certificate and description of such automobile, to be entered on the records of his department in alphabetical and numerical order. The Commissioner of Motor Vehicles may refuse registration in the case of any automobile that shall not comply with the requirements of this act, or that shall seem to him unsuitable for use on the roads and highways of this State. Each owner having a residence outside of the State shall file with the Secretary of State a duly executed instrument, constituting the Secretary of State, and his succes-

sors in office, the true and lawful attorney upon whom all original process in any action or legal proceedings caused by the operation of his registered motor vehicle, within this State, against such owner may be served, and therein shall agree that any original process against such owner shall be of the same force and effect as if served on such owner within this State; the service of such process shall be made by leaving a copy of the same in the office of the Secretary of State, with a service fee of two dollars, to be taxed on the plaintiff's costs of suit. Said Commissioner of Motor Vehicles shall forthwith notify such owner of such service by letter directed to him at the post office address stated in his application. Upon any and every transfer of a registered automobile by the owner thereof, in whose name the same is registered, the said registration and certificate thereof shall forthwith be and become void; but the same may be validated by the endorsement of the Commissioner of Motor Vehicles, the purchaser having made written application therefor and paid a transfer fee of one dollar."

17.—No person shall hereafter drive an automobile upon any public highway in this State unless licensed to do so in accordance with the provisions of this act. No person under the age of sixteen years shall be licensed to drive automobiles, nor shall any person be licensed to drive automobiles until said persons shall have passed a satisfactory examination as to his ability as an operator, which examination shall include a test of the knowledge on the part of said person of such portions of the mechanism of automobiles as is necessary in order to insure the safe opera-

tion of a vehicle of the kind or kinds indicated by the applicant. Drivers' license certificates shall expire on the thirty-first of December of each year. Said licensee shall be entitled to drive any registered automobile of the horsepower or of a lesser horsepower than that for which he is licensed, but not greater. There shall be two classes of drivers' licenses. Those authorizing the licensee to drive cars of less than thirty horsepower shall be of the first class, and those authorizing the licensee to drive cars of thirty and greater horsepower shall be of the second class. The annual license fee to be charged shall be two dollars for drivers of the first class, and four dollars for drivers of the second class. If an automobile has more than one rating of horsepower, all fees shall be reckoned at the highest rating; provided, however, that the Commissioner of Motor Vehicles shall, upon the application of any person who or corporation which shall have complied with the provisions of subdivision three of Section sixteen of this act, issue to the said person or corporation a sufficient number of special drivers' certificates, which shall have endorsed thereon the registration number under the laws of the adjoining State in which the business of the said applicant shall be conducted of each of the automobiles of said applicant included in and covered by any license certificate issued pursuant to said subdivision three of Section sixteen of this act, and which, when duly countersigned by a special agent appointed for that purpose by the said Commissioner of Motor Vehicles pursuant to the provisions of Section ten of this act, shall authorize and permit the person to whom the same is issued to operate any of

the automobiles registered under the laws of such adjoining State, the registration numbers of which shall appear endorsed upon the said certificate, and no others within the State of New Jersey, for a period of not to exceed twenty-four hours at any one time. Said driver shall at all times when operating any of the said vehicles within the State of New Jersey have in his possession the said certificate, and shall, whenever requested so to do, exhibit the same to any motor vehicle inspector or police officer or constable within the said State of New Jersey; no other certificates of registration shall be required of the said driver, and the preceding provisions of this section shall not be applicable to him; provided, however, it shall be lawful for the Commissioner of Motor Vehicles, at his discretion, to issue to any person a written permit, under the hand and seal of said Commissioner, allowing the said person, for the purpose of fitting himself to become a motor vehicle driver, to operate a motor vehicle for a specified period of not more than three weeks while in the company and under the supervision of a licensed motor vehicle driver; and such permit, under the hand and seal of the Commissioner of Motor Vehicles, shall be sufficient license for the said person to operate a motor vehicle in this State during the period specified, while in the company of and under the control of a licensed motor vehicle driver of this State; and provided further, that the said person, as well as such licensed motor vehicle driver, shall be held accountable for all violations of this act committed by the said person while in the presence of such licensed motor vehicle driver.

18.—Each license to drive an automobile shall specify the maximum horsepower of the automobile allowed to be driven thereunder, and shall have endorsed thereon, in the proper handwriting of the licensee, the name of said licensee. And said licensee, when thereupon requested by any motor vehicle inspector or magistrate, while in the performance of the duties of his office under this act, shall exhibit said license to said officer and write his name in the presence of said officer, to the end that he may thereby determine the identity of said licensee."

"Part X.—Miscellaneous.

37.—Moneys received in accordance with the provisions of this act, whether from fines, penalties, registration fees, license fees, or otherwise, shall be accounted for and forwarded to the Commissioner of Motor Vehicles and by him paid over to the Treasurer of the State of New Jersey, to be used by the Commissioner of Public Roads, as a fund for the repair of such improved roads throughout the State as said Commissioner shall designate, regard being had to the repair of the most important improved roads, and the distribution of the benefits of this act throughout the several counties of this State, said fund to be available annually on and after the first day of July in each year; provided, however, that there shall first be deducted from the moneys as aforesaid received the amount appropriated by the Legislature in any annual or supplemental bill for the maintenance of said Department of Motor Vehicles, which said sum so deducted shall become a part of the general State fund."

IV.

Argument.

I.—The judgment and decision of this Court in the case of Hendrick *vs.* The State of Maryland is not controlling on this appeal—the same issues were not presented by the record in that case as are presented here.

It is contended by the plaintiff in error that the Motor Vehicle Law of the State of New Jersey here in question, is unconstitutional in that:

II.—The license fees exacted from owners of automobiles by the Act of 1908 of the State of New Jersey are not limited to the cost of registration and inspection but exceed that cost to an extent so large as to require the Court to judicially determine that they are intended as revenue measures.

III.—The tax cannot be supported as a tax upon business or occupation or as a privilege tax. It cannot be a privilege tax because an automobile is not an inherently dangerous instrumentality but an ordinary and usual means of conveyance entitled to equal rights on the highway.

IV.—The imposition of License fees for revenue purposes as is the fact under the statute in question, upon non-residents of the State of New Jersey passing through that State in a motor vehicle is violative of the Constitution of the United States in that such non-residents passing through the State of New Jersey as was the plaintiff in error are engaged in interstate commerce and the imposition of License fees for revenue upon them

is a burden on interstate commerce and not within the power of the State of New Jersey to impose.

V.—The statute in question is violative of the Constitution of the United States for the further reasons that:

(a) It abridges the privileges of citizens of the United States, 14th Amendment, Section I;

(b) It requires as a condition of granting licenses that citizens of other States shall authorize an agent in New Jersey to accept service of process in suit brought against such licensees, thereby further abridging their privileges as citizens of the United States and denying to them equal protection of the laws, but discriminating against them in respect to such suits in favor of residents of New Jersey.

POINT I.

The judgment and decision of this Court in the case of Hendrick *vs.* State of Maryland is not controlling on this appeal. The same issues were not presented by the record in that case as are presented here.

In the case of Hendrick *vs.* State of Maryland, 235 U. S., 610, some of the points involved in this case were urged before this Court, but there was not sufficient evidence in the record to permit of their proper presentment. There was no evidence in the cited case to show that the fees collected under the Motor Vehicle Law of Maryland were more than sufficient in amount to de-

fray the cost of registration, and, in fact, provide in addition thereto a substantial revenue for the State and part of the general state funds, out of which the expenses of the government are defrayed.

The converse is true in the case at bar. The record shows that a great part of the funds derived from the enforcement of the law in question went into the State Treasury (Record, pages 39, 40, 41, 42, 43, 44 and 45). (See further discussion of this subject in Point II.)

In the Hendrick case there was no evidence of discriminatory restrictions against non-residents; whereas in the case at bar there is every evidence of discrimination.

Under the Statute in the case at bar, every non-resident of the State of New Jersey, under Section 16 of the Act is required to execute a power of attorney allowing the Secretary of State to accept service of process for him in any action for damages caused by the operation of his motor vehicle, in the State of New Jersey before he is permitted to operate his vehicle therein.

In the Hendrick case, the record did not contain sufficient facts upon which it could be determined that Hendrick was engaged in interstate commerce and travel at the time of his arrest. It did not appear that he had complied with the laws in the State of his residence with reference to motor vehicles and their operation, or was licensed to operate in the State of Maryland.

In the case at bar, the plaintiff-in-error, Kane, had registered and secured a license for his motor vehicle under the laws of the State of New York, and had complied in all respects with the provisions of law of that State with reference to motor

vehicles, and was licensed to operate his motor vehicle in the State of New Jersey.

The record in the case at bar presents fully the question whether the owner and operator of a motor vehicle which is duly licensed and registered in the State of his residence has the right, while using his motor vehicle in interstate travel and commerce, to use the roads of another state, improved or unimproved for such purpose, without the payment of a tax, and the imposition of other restrictions, which are not imposed upon the residents of that state.

The question whether or not a state may impose reasonable requirements for the safe operation of motor vehicles by non-residents and for the protection of the public, is not raised in the case at bar, for the reason that the plaintiff-in-error was licensed as an operator of the vehicle he was operating in the State of New Jersey, and therefore, he had complied in all respects with the Law of New Jersey, in so far as that law applied to the safe operation of motor vehicles.

The complaint against him, upon which he was convicted, was based solely on the fact that he had not paid the tax imposed upon his vehicle, and the sole question here is, whether or not any such tax may be imposed upon a non-resident for the use of the roads of the state, improved or unimproved, while such non-resident is engaged in interstate commerce.

We respectfully submit that that question was not presented or decided in the case of Hendrick *vs.* State of Maryland, for the following reasons: It is contended by the ~~appellant~~ defendant here that the decision in the case of Hendrick *vs.* State of Maryland turned upon three propositions as follows:

First.—That a state has a right to regulate and impose taxes for revenue upon the motor vehicles of non-residents because their operation is attended by constant and serious danger to the public, and is abnormally destructive to the roads themselves.

This proposition is to be considered in view of the now well established law that a motor vehicle is an ordinary and usual means of conveyance, entitled to equal rights upon the highway with every other vehicle (see Point III of this Brief). A motor vehicle, in and of itself, is no more dangerous than a horse-drawn vehicle, and the dangers attendant upon the use of both are due to the operation and direction thereof, and not to the character of the vehicles themselves. Many articles of commerce are dangerous in inexperienced hands, but they cannot be condemned and taxed for that reason.

If the proposition were true that a motor vehicle is an inherently dangerous instrumentality, then it might be prohibited and destroyed, or taxed out of existence, by government. If on the other hand, it is a lawful and proper vehicle for highway uses then it is simply a subject of regulation and it may be licensed and regulated, and a license fee imposed to defray the expense of that regulation, but it cannot be taxed for general revenue, because the power of taxation includes the power to prohibit and destroy.

There is a vast distinction, which has been too little recognized, and which has been involved in not a little of confusion, between two different classes of license fees, so called, imposed by governmental authorities. There is, on the one hand, the class of license fees imposed by the Govern-

ment under its authority to regulate, and there is the other class of license fees imposed by the Government, in cases where it has not only the power to regulate, but the power to prohibit or destroy. The fees imposed in both these classes of cases are, correctly, or incorrectly, designated "license fees," and because of this lack of precision in terminology the confusion above referred to has arisen. The authority to impose these fees in both classes of cases is based upon the police power of government, the difference being that in the former class of cases the authority extends only to regulation whereas in the latter class of cases the authority extends to prohibition, destruction, or confiscation. The things involved in the first class are things which, in themselves, are not necessarily injurious to health, morals, or the public good generally, whereas the things dealt with under the second class are things which may be regarded as in themselves injurious to the public health, morals or general good. It is because the governmental authority in connection with the first class of objects extends only to regulation that the "license fees," so called (and improperly so called) cannot in amount, extend beyond the cost of the process of imposing the fees and issuing the so-called license; because if the fees were made larger in amount than such cost they would immediately, to the extent that they are in excess of the cost, become taxes, and they would be obviously special taxes, not imposed under the general power of taxation, but discriminatory, being exclusively imposed on a particular species of property; and to that extent and in that degree would be confiscatory. With regard to the second class of objects, with reference to which the

Government has authority to license and exact the payment of license fees, it is to be said that this class of objects, inherently dangerous or injurious, may be, under the power of government, absolutely prohibited, destroyed or confiscated; and, therefore, the Government is at liberty, inasmuch as it could confiscate, or destroy, or prohibit, to exact such so-called license fees even to such an extent as to amount to a considerable tax, as in its judgment or discretion may be deemed wise or necessary under the circumstances. The amount of such "license fees" in excess of the cost of the process of licensing and issuance of licenses, is, of course, a special, discriminatory tax, but it is legal and justified under the power of Government, because the Government could, if it chose in the case of such objects, prohibit, or confiscate, or destroy the things so licensed.

The motor vehicle as such, falls into the former class of objects, and it seems to be so well settled as to be beyond discussion that governmental authorities have no power whatever to prohibit the use of the automobile or to destroy it, or to confiscate it, or to drive it from the highways (further argument or authority for this proposition, may be found in Point III of this Brief). It is a subject of regulation, but it is not a subject of confiscation. Therefore, Governmental authorities have no power or right to exact license taxes for revenue purposes in excess of the sum necessarily required as the cost of the process of licensing, because if they have such power, they have the power to confiscate and destroy. The exercise of any such power as applied to a motor vehicle would be clearly unconstitutional.

It is contended by the ~~appellant~~ defendant here that a

further proposition upon which the case of Hendrick *vs.* Maryland turns is:

Second.—That a state has a right to impose taxes for revenue purposes on the motor vehicles of a non-resident engaged in interstate commerce in order to defray the expense of the construction of the improved roads of that state, which are furnished as special facilities for those using the motor vehicles as an instrument of interstate commerce.

This proposition must be considered in view of the decision of this Court in the case of Barrett *vs.* City of New York, 232 U. S., 14, and the long line of authorities which are followed in that case, and some of which were cited in the Minnesota Rate Case, 230 U. S., 352, at p. 400, 401. It must not be forgotten that the maintenance and repair of the roads of a state are part of the functions of government and the money expended for the purpose of construction, maintenance and repair of these roads is the result of taxation.

In the case of Barrett *vs.* City of New York, *supra,* it was held that the City of New York could not license the drivers of express wagons or impose a tax upon such wagons using the streets of New York, because such a license and tax would be a restriction and a tax upon interstate commerce notwithstanding the fact that the City of New York provides special facilities for wagons using its streets, including improved pavements, traffic regulations and protection by police, fire and sewage systems and many modern conveniences. If the State of New Jersey can impose a tax to defray the cost of the construction and maintenance of its improved roads upon the motor

vehicles of non-residents engaged in interstate commerce, the City of New York would have had the right to impose a tax upon the motor vehicles of express companies engaged in interstate commerce for the use of its improved streets. If one proposition is sound, the other proposition is sound. They must stand or fall together. The reason that neither is sound, is that a tax for the use of the roads is a tax to defray an expense incidental to the exercise of governmental functions, and for general revenue purposes of a state, and such a tax cannot be imposed upon interstate commerce. It is submitted that the cases of Transportation Co. *vs.* Parkersburg, 107 U. S., 691, 699; Huse *vs.* Glover, 119 U. S., 543, at p. 548, 549; Monongahela Navigation Co. *vs.* United States, 148 U. S., 312, at p. 329, 330, and authorities cited in the Minnesota Rate Case, 230 U. S., 352, at p. 405, are not authorities for the proposition that taxes may be imposed upon interstate commerce to defray the expense of the exercise of governmental functions.

The case of Transportation Co. *vs.* Parkersburg, *supra,* merely held that a city could charge wharfage fees against vessels engaged in interstate commerce for the use of a private facility, to wit, a wharf.

The case of Huse *vs.* Glover, *supra,* turned upon the proposition that a state could charge tolls for a private facility, to wit, a lock in a canal, and collect such tolls from vessels engaged in interstate commerce.

In the case of Monongahela Navigation Co. *vs.* United States, *supra,* this Court held that a private company with a state franchise to maintain private facilities such as locks and dams in a river

and canal, could charge reasonable fees therefor, and that their franchise was valuable property upon condemnation.

In the Minnesota Rate cases, this Court said:

> "While the state may not impose a duty on tonnage, it may regulate wharfage charges and exact tolls for the use of artificial facilities provided under its authority."

The maintenance of a road is not the maintenance of an artificial facility. A road is maintained by a state as one of the functions of government, just as the government maintains the Police Department and the Fire Department and various other state and city departments, and it is submitted that a tax cannot be imposed upon interstate commerce to defray the cost of the exercise of such governmental functions. If it can, the theory, upon which the present decisions prohibiting the taxation of interstate commerce rest, must fall to the ground. Further the Minnesota rate cases related only to the charge for a specific user, that is to tolls for the actual use of the facility and proportioned to the amount of such user, whereas in our case the tax is imposed for registration of the vehicle whether there be any subsequent user or not and quite irrespective of the extent of such user.

Third.—A further proposition upon which it may be contended by the state of New Jersey, the decision in Hendrick *vs.* Maryland turns, is:

That a tax imposed for the maintenance of the roads of the state as a special facility accorded to those engaged in interstate commerce may be

imposed alone upon motor vehicles engaged in said commerce, to the exclusion of all other vehicles, for the reason that the success of such vehicles depends upon good roads, and their operation over them is peculiarly injurious to said roads. We submit that no such proposition was established by the Hendrick case.

If it is true that a tax may be imposed by a state upon interstate commerce for the use of special facilities, and that improved roads are such special facilities, it does not at all follow that such tax may be imposed upon one kind of vehicles using those facilities, and that all other vehicles making use of them may be exempt. There must be some reasonable basis for classification, and if the imposition of taxes to maintain the improved roads of a state is to be justified on the basis that such roads are special facilities, then the class to be taxed must include all those using the roads, because use of the roads and not the character of the vehicle is the only reasonable basis for the classification.

It will not be seriously contended that horse-drawn vehicles do not use and injure the improved roads of the state of New Jersey, and there is no theory in law upon which they can be exempt, and at the same time a tax imposed only on motor vehicles. A tax imposed upon any such basis would be clearly in violation of the Fourteenth Amendment of the Constitution of the United States.

Gulf of Colorado & Sante Fe R. R. Co. *vs.* Ellis, 165 U. S., 150;
Cotting *vs.* Kansas City Stock Yards, 183 U. S., 79;

Connelly *vs.* Union Sewer Pipe Co., 184 U. S., 540;
Yick Wo *vs.* Hopkins, 118 U. S., 356.

From the above analysis of the decision of this Honorable Court in the case of Hendrick *vs.* State of Maryland, *supra*, it is submitted that that case is not controlling in the case at bar, first because the same issues were not presented to this Honorable Court, and secondly, because the decision in that case rests and depends upon propositions peculiar to it and which must be considered in the light of the prior decisions of this court, and the legal principles heretofore established.

POINT II.

The license fees exacted from owners of automobiles by the Act of 1908 of the State of New Jersey are not limited to the cost of registration and inspection, but exceed that cost to an extent so large as to require the Court to judicially determine that they are intended as revenue measures.

The following is a brief history of legislation in New Jersey on the subject of automobiles:

The first act on this subject was passed in 1903 (New Jersey P. L., 1903, page 80). This act required automobiles to be registered with the Secretary of State and a fee of one dollar for each vehicle to be paid. No requirement that non-residents should file a power of attorney with the Secretary of State was included in this statute. No

distinction was made between residents and non-residents. The act regulated the speed of automobiles, prohibited racing, required the license number to be displayed, lamps to be carried and lighted at specified hours.

The act of 1903 was amended in many respects by Chap. 250 of the Laws of 1905 (P. L. 1905, page 484). The registration fee of one dollar was retained and additional regulations as to the license number, lamps, brakes, signal devices, speed, etc., were made.

In 1906 a new act was passed under a new title, being Chap. 113 of the Laws of 1906, page 177.

That act created a Department of Motor Vehicles, Registration and Regulation in the Department of State. It increased the amount of the license fee for registration to three dollars for each motor vehicle having a rating of less than thirty horse power and five dollars for each motor vehicle having a rating of thirty horsepower or more.

It required drivers of automobiles to pass a satisfactory examination and to take out a license, paying a fee therefor.

It required non-residents to file with the Secretary of State a power of attorney constituting the Secretary of State the attorney of such non-resident owner upon whom all original process in any within this State against such owner may be served.

It further regulated the use of the roads and highways and the method of driving and operating motor vehicles within the State.

The act of 1906 was extensively amended by Chap. 304 of the Laws of 1908, page 613. The only change made by this amendment pertinent to this

case was an increase of the fees for registration of automobiles. These fees were increased to the rate following, viz.:

A fee of three dollars for automobiles of ten horse power or less, five dollars for automobiles of from eleven to twenty-nine horse power inclusive, ten dollars for automobiles of thirty horse power or more.

The act of 1908, Sec. 37, directed that the moneys received in accordance with the provisions of that act, whether from fines, penalties, registration fees, license fees or otherwise, be accounted for and forwarded to the Commissioner of Motor Vehicles and by him paid over to the Treasurer of the State to be appropriated annually to the Commissioner of Public Roads to be used as a fund for the repair of the improved roads throughout the State, whether they had been originally built by state aid or not, and to be by the said Commissioner apportioned yearly among the several counties according to the mileage of improved roads in each county.

The Record shows the amount of revenue derived by the State from these sources for the years 1906, 1907 and 1908 from January 1st to action or legal proceeding for damages caused by the operation of his registered motor vehicle October 1st, the year 1908 not having been completed when this action was begun. It also shows the expenses of the State for the management of this department as conducted by the Commissioner of Motor Vehicles. The figures are printed twice in the Record, appearing on pages 21 to 23, and 31 to 33. They are embodied in the stipulation of facts. (Record, pages 22 to 33.)

Down to May 1st, 1908, license fees were col-

lected under the act of 1906. Since that time they have been collected in accordance with rates fixed by the act of 1908.

The following table shows the number of cars registered in the respective years 1906, 1907 and 1908, the year 1908 being divided into two parts: from January 1st to May 1st, and from May 1st to October 1st.

The table also shows the fees collected for the registration of automobiles during each of these four periods, and also the fees collected for drivers' license for the same periods:

CARS REGISTERED.

1906	13,759
1907	17,619
1908 (Jany. 1 to May 1)	3,515
1908 (May 1 to Oct. 1)	14,100

REGISTRATION FEES COLLECTED.

1906	$46,763.00
1907	61,594.25
1908 (Jany. 1 to May 1)	14,058.00
1908 (May 1 to Oct. 1)	83,438.00
	$205,853.25

DRIVERS' LICENSES FEES COLLECTED.

1906	$20,209.00
1907	25,529.00
1908 (Jany. 1 to May 1)	5,359.00
1908 (May 1 to Oct. 1)	38,250.00
	$89,347.00

As fees for drivers' licenses are collected under the same law and as part of the same scheme of regulation they are properly included in the com-

putation of the total revenues derived by the State from license fees under this scheme. The amount of fines collected for violations of the act are also paid into the same fund, but have not been made a part of this calculation.

The following is a summary of the total receipts by the State of fees for the registration of automobiles and drivers' licenses for the four periods above mentioned and a statement of the total expenses of the State of every kind incurred in enforcing, executing, carrying out and maintaining the provisions of the act and for doing all work or business, in providing all things and paying all expenses required therefor, including the allowances to agents under Sec. 10 of the act:

Receipts.		
1906	$66,972.00	
1907	87,123.25	
1908 (Jany. 1 to May 1)	19,417.00	
1908 (May 1 to Oct. 1)	121,688.00	
		$295,200.25
Expenses.		
1906	$4,738.09	
1907	19,475.20	
1908 (Jany. 1 to May 1)	6,154.55	
1908 (May 1 to Oct. 1)	28,118.33	
		$58,486.17
Receipts over expenses		$236,714.08
The receipts over expenses for the period from May 1, 1908, to October 1, 1908, under the amendment of 1908, were		$93,569.77
The receipts over expenses for year 1907, were		67,648.05

Judging, therefore, from the actual financial results of this system of licensing automobiles and the drivers of automobiles, it is a grand success as a revenue-raising device. It will be presumed, reasoning from the result to the motive, that it was intended by the Legislature to be a substantial source of State income.

That such was and is the avowed purpose of the State is placed beyond the domain of inference by the expressed avowal of the Chief Executive of the State of New Jersey in his Inaugural Address to the Legislature in January, 1908. In that address Governor Fort called attention to the general use of these machines, stating that the number of licenses in the State exceeded 25,000. After referring casually to the matter of speed regulation, he goes on to say:

> "The returns from this Department on the basis of an increased license fee would give it as large a revenue as derived from any other department of the State, and I should not be surprised if the revenue within a year on a reasonable horsepower license fee would exceed $300,000. The expense of conducting this Department probably would not reach five per cent. of the entire revenue received."

Again:

> "It would seem as if we should gain from the automobile owners a revenue of about $250,000 per year, and this entire revenue should be devoted to the repair, or the aiding in the repair, of the public highways of the State, the building of which has been assisted by state aid."

It was after this deliverance that the bill amending the act of 1906 was introduced largely increasing the license fees. This bill was passed and approved by Governor Fort and became the amendment of 1908.

The fee of one dollar charged under the law of 1903 for the registration of each automobile was never inadequate to meet the entire expenses of the State in registering and regulating motor vehicles. There is no pretense and can be no excuse that the increase of the license fees was made for the purpose of making up any deficiency in the expenses of administering the law. It is obvious that the increase was made solely for the purpose of producing revenue for the State to an amount grossly in excess of the State's expenses in this connection.

The principle upon which a license fee for regulation imposed under the police power should be fixed is expressed in the decision of the Court of Errors and Appeals of New Jersey in State, North Hudson County Railway Company, Prosecutor *v.* Hoboken, 12 Vroom, 71. It was there held that the distinction between the power to license as a police regulation and the power to license as a revenue measure is of the utmost importance. If granted with a view to revenue, the amount of the tax, if not limited by the grant, is in the discretion and judgment of the authorities which impose it; given as a police power, it must be exercised as a means of regulation only and cannot be used as a source of revenue.

In that case the ordinance of Hoboken required a fee of one dollar for the cost of issuing the license and in addition thereto a license fee of fifteen dollars for every one-horse car and twenty-

five dollars for every two-horse car which should be run on any street railway in the city. This was held to be a revenue measure and not a police regulation, as the amount of the fee clearly appeared to exceed the reasonable compensation for the inspecting and regulating of the company's business.

The same principle is uniformly maintained by the United States Courts.

> Laundry License Case, 22 Fed. Rep., 701; Philadelphia *vs.* Telegraph Co., 82 Fed. Rep., 797.

In the Laundry License Case, *supra,* a fee of twenty dollars a year upon laundries was held to be excessive, and the sum of one dollar was indicated by the court as sufficient for the expense of regulation.

In Pichard *v.* Pullman Southern Car Co.. 117 U. S., 34, a privilege tax of fifty dollars on parlor cars was held to be a tax and burden on commerce and void.

In Smith *v.* Alabama, 124 U. S., 465, a license fee of five dollars for railroad engineers was held not to appear to be excessive as a license fee for regulation and examination.

In Commonwealth *v.* Stodder, 2 Cush., 562, fees varying from one dollar to twenty dollars for each vehicle were imposed upon persons driving omnibuses from Roxbury to Boston and from Boston to Roxbury for hire. This was held to be manifestly in excess of the amount necessary to pay the expenses incidental to giving a license and to the supervision of coaches, omnibuses, stages, etc., and was declared to be an assessment of a tax

upon the owners of these vehicles. Emphasis is placed upon the fact that the license fee varied from one dollar to twenty dollars as indicating that the fee was imposed for revenue and not merely to pay the cost of issuing the license and supervising this particular calling.

> "Authority to exact license fees as a branch of the police power warrants the exaction of no fees beyond the reasonable expense of issuing the license and regulating the thing licensed."
>
> Per Dixon, Justice, Mulcahy *v.* Newark, 28 Vroom, 513.

This expression of the law was quoted with approval by the New Jersey Court of Errors and Appeals in Johnson *v.* Asbury Park, 31 Vroom, 427, 430. See also Muehlembrinck *v.* Commissions, 13 *Idem*, 364.

That it was the intention of the New Jersey Legislature to impose these fees for purposes of revenue is manifest from the disposition of the moneys made by the 37th section of the statute. That section provides that the moneys received in accordance with the provisions of this act, whether from fines, penalties, registration fees, license fees, or otherwise, shall be paid over by the Commissioner of Motor Vehicles to the State Treasurer to be appropriated annually to the Commissioner of Public Roads to be used as a fund for the repair of the improved roads throughout the State and to be by the Commissioner apportioned once each year among the several counties of the state according to the mileage of improved roads in each county, the share apportioned each county

to be used for the repair of improved roads in that county under the direction of the Commissioner of Public Roads, and to be paid in the same manner as State funds are now paid for the improvement of public roads.

The intention to use the licensing power as a revenue measure may be deduced from the declaration of the Legislature that "the proceeds of the licenses shall be appropriated to uses beyond the expenses of licensing and regulating the thing licensed."

Mulcahy *v.* Newark, *supra;*
Boston *v.* Schaffer, 9 Pick., 415;
Chilvers *v.* People, 11 Mich., 42;
Adams Express Co. *v.* Owensboro, 85 Ky. 265.

That it was the intention of the Legislature to impose these licenses for the purposes of revenue may also be deduced from the fact that the amount of the fees for registering automobiles varies in accordance with the power of the machine. This indicates a purpose to impose a higher tax on a more powerful machine. If the license fee were intended to be limited to the reasonable expense of issuing the license and regulating the car there would be no necessity to charge, nor any reason in charging, a larger fee for the car of great horse power than for one having less power. The cost of issuing the license and of regulation is no greater for a large machine than for a small one.

It cannot be successfully contended that this contribution upon vehicles of this kind is justified by reason of any special damage which automobiles cause to the highways which this class of

property should be made to compensate by licenses upon a revenue basis. Such a contention conflicts with the principle of public taxation upon which highways are constructed and maintained, which is by general tax imposed upon the localities, or, under recent methods in part by contributions out of the State treasury. In Muehlenbrinck *v.* Commissioners, 13 Vroom, 364-368, it was declared that a license fee could not be charged for the use of the public streets; that would be a road tax imposed not in the manner authorized by law.

Again, the imposition of a license fee for revenue upon one class of vehicles, if justifiable on account of the injury done to the highways by their use, would require that a similar license should be imposed upon all vehicles in accordance with the extent of injury which all such vehicles cause to the highways. This subjects the contention to the fatal reply of unconstitutional discrimination between different classes of vehicles.

The cases of

Transportation Co. *vs.* Parkersburg, 107 U. S., 691-699;
Hose *vs.* Glover, 119 U. S., 543-548;
Monongahela Navigation Co. *vs.* U. S., 148 U. S., 312-329,

are therefore not in point. These cases only go so far as to uphold a reasonable impost—or toll—for the use of artificial mediums provided by states on private companies in aid of commerce—and not as a tax or toll for the use of the public roads—particularly interstate roads—themselves.

POINT III.

The tax cannot be supported as a tax upon business or occupation, or as a privilege tax, it cannot be a privilege tax because an automobile is not an inherently dangerous instrumentality, but an ordinary and usual means of conveyance entitled to equal rights on the highway.

The right of a citizen of another State to enter the territory of New Jersey and travel upon the public highways is not a privilege which can be either granted or withheld by New Jersey. The right subsists irrespective of the will or pleasure of the Legislature of any State. It is found on that guarantee of free intercourse between the States which it was one of the great purposes of the founders of the Union to secure by the Commerce Clause of the Constitution of the United States. It is one of the privileges of citizens of the United States which the States are forbidden to impair. It is a reciprocal right, affording the privilege to the citizens of New York to traverse the other States of the Union as freely as the inhabitants of those other States may travel through her own confines.

This right of natural persons is not like the right of a corporation to enter a State and do business therein. The corporation can act only by reason of its franchise, and the State may impose such terms as it deems fit as a condition of its permission to a foreign corporation to do busi-

ness therein. In the case of a corporation the right is a privilege; in the case of a natural person it is not a privilege.

The word "license" implies consent, permission, authority; it carries the implication that without consent no right exists in the license. In such a sense "license" as applied to the right to enter upon and traverse a public highway is inappropriate. The right exists without permission or consent; that is, without special license. The granting of a license in such a case is only a part of the machinery of regulation and not the sale of a privilege.

We pass over, for later consideration, the question whether a requirement that a non-resident of New Jersey shall make application by written petition to the State Department at Trenton and go through the formalities prescribed by this statute before he can run his car from off the ferryboat at Jersey City or Camden onto a New Jersey thoroughfare is a valid exercise of the power of the State over an instrumentality of interstate commerce. It may be argued with much reasonableness that the power of the State in the exercise of its rights of regulation for police purposes, both as to residents and non-residents, is confined to what is known as the "law of the road," comprising the incidents of speed, lights, etc.; and that the provision for registration, especially as applied to only one kind of vehicle, is invalid both on the ground of unreasonableness and of discrimination.

The automobile is an ordinary and usual means of conveyance, and its use on the highway is recognized by all as a use clearly within the purview

of its dedication. There has never been a case in which it has been said that the use of the highway by motor vehicles is unlawful in and of itself. It cannot be said as a matter of common sense, or as a matter of law. The cases have all held that the motor vehicle has rights on the highway equal to the rights of all other vehicles, and is a use of the highway compatible with the purposes of its dedication.

It has been very recently held in a case in the Appellate Division of the Supreme Court of the State of New York, that the rights of a motor vehicle on the highways are equal to the rights of other vehicles, and that a motor vehicle is not inherently dangerous, and upon that ground subject to special regulations.

Vincent & Seymour *v.* Crandall & Godley Co., 131 App. Div., 200.

In that case an action was brought against the owners of an electric automobile truck which was allowed to stand in the street with the power shut off, no one tending it, while the operator was inside in the store.

It appeared that during this time, by the wilful act of some mischievous boys, the truck was started, and caused to run into the plaintiff's store inflicting damage. The plaintiff contended in the Court below that the defendant was negligent in allowing the truck to remain unattended for a length of time, because the truck was inherently dangerous in itself, relying upon the rule that when a man has an inherently dangerous instrumentality he must use extra precaution to protect others, and is virtually an insurer. The lower

court, coinciding with the plaintiff's view of the law, held for the plaintiff. On appeal the judgment was reversed by a unanimous court of five justices, and in the opinion the court said:

> "The court held that the negligence of the defendant in leaving the truck unattended for the length of time stated, was the proximate cause of the damages, and that the case was controlled by the decision of this court in Travell *v.* Bannerman (71 App. Div., 439), where the defendant was held for negligence, because he left explosive material in a lot accessible to boys, who caused an explosion by pounding the material with a rock.
>
> "I do not think the judgment can be sustained. Power machines are recognized as legitimate, and the condition of the machine in question as left by the chauffeur, must be regarded as analogous to that of a horse and wagon securely tied. In either case, overt acts of wilful wrongdoers are necessary in order to change the physical condition, and work mischief, and it cannot be assumed as matter of law that they are more likely to exist in one case than in the other. In this instance, the proximate cause of the plaintiff's damage was the wilful act of the boys who started the truck, just as it would be had they wilfully untied a horse and driven it into the drug store."

The court went on to say that the rules of law applicable to dangerous instrumentalities, do not apply to motor vehicles and their use.

The law on this subject was excellently and soundly stated in the case of Indiana Springs Co. *v.* Brown in the Supreme Court of Indiana, 74 N. E. Rep., 615.

The Court said:

"The law does not denounce motor carriages, as such on the public ways. For, so long as they are constructed and propelled in a manner consistent with the use of the highways, and are calculated to subserve the public as a beneficial means of transportation, with reasonable safety to travelers by ordinary modes, they have an equal right with other vehicles in common use to occupy the streets and roads. Because novel and unusual in appearance, and for that reason likely to frighten horses, unaccustomed to see them, is no reason for prohibiting their use. In all human activities, the law keeps up with improvement and progress brought about by discovery and invention, and in respect to highways, if the introduction of a new contrivance for transportation purposes, conducted with due care, is met with inconvenience, and even incidental injury to those using ordinary modes, there can be no recovery, provided the contrivance is compatible with the general use and safety of the road. It is therefore the adaption and use, rather than the form or kind of conveyance, that concerns the courts. *It is improper to say that the driver of the horse has rights in the the road superior to the driver of the automobile.*

"Both have the right to use the easement, and each is equally restricted in the exercise of his rights by the corresponding rights of the other. Each is required to regulate his own use by the observance of ordinary care and caution to avoid receiving injury as well as inflicting injury upon the other. And in this the quantum of care required is to be

estimated by the exigencies of the particular situation; that is, by the place, presence, or absence of other vehicles and travelers; whether the horse driven is wild or gentle; whether the conveyance and power used are common or new to the road; the known tendency of any feature to frighten animals, etc. The restrictions which the law imposes upon all modes of travel and traffic on the highway are such as tend to secure to the general public the largest enjoyment of the easement, and must be observed and borne by all alike on the broad ground that all have an equal right to travel in safety, and when accidents happen as incidents to reasonable use and reasonable care, the law awards no redress. 'When the highway is not restricted in its dedication to some particular mode of use,' says Cooley, C. J., in Macomber *v.* Nichols, 34 Mich., 217, 22 Am. Rep., 522, 'it is open to all suitable methods; and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as formerly. A highway established for the general benefit of passage and traffic must admit of new methods of use, whenever it is found that the general benefit requires them.' Knight *v.* Lanier (Sup. 1902), 74 N. Y. Supp., 999; Mason *v.* West (Sup. 1901), 70 N. Y. Supp., 478; Shinkle *v.* McCullough, 77 S. W., 196, 25 Ky. Law Rep. (1903), pt. 2, p. 1143; Elliott's Roads and Streets, Sec. 851; Bogue *v.* Bennett, 156 Ind., 478, 482, 60 N. E., 143, 83 Am. St. Rep., 212, and cases cited."

This same doctrine was enunciated in the case of Mason *v.* West, 61 N. Y. App. Div., 40. The court there said:

> "That the use of the streets must become extended to meet the modern innovations of rapid locomotion is evident, and we do not mean to suggest that an automobile or any other of the present means of conveyance is an unlawful or improper user, but in this particular case, there was evidence to support the judgment of the municipal court."

In the case of the City of Chicago *v.* Banker, 112 Illinois Appellate Court Reps., 94, a case squarely in point Mr. Justice Ball, delivering the opinion of the court, said:

> "In the case at bar the right of the appellee to the use of the streets is undoubted. It is true that he must use them without interfering with the safety of others in the exercise of the same right; subject to that limitation, his right cannot be regulated by an ordinance. The fact that an automobile is a comparatively new vehicle is beside the question. The use of streets must be extended to meet the modern means of locomotion. Moses *v.* P. F. W. & C. Ry. Co., 21 Ill., 515. *The speed of an automobile may be regulated, and reasonable safety appliances such as gongs and brakes may be required, but to compel one who uses his automobile for his his private business and pleasure only, to submit to an examination and take out a license (if the examining board sees fit to grant it) is imposing a burden upon one class of citizens in the use of the streets not imposed upon others.*"

That the right to use the streets in conformity with the right of others is a natural right inherent in every citizen which cannot be converted into a privilege or grant by legislation, has always been the established doctrine in the courts of this country.

In the case of City of Chicago *v.* Collins, 175 Ill., 445, Mr. Justice Phillips said:

> "The right of the public to use the streets is the right to use them for the purposes of travel in the recognized methods in which the public highways of the State are used. Any method of travel may be adopted by individual members of the public, which is an ordinary method of locomotion or even an extraordinary method if it is not of itself calculated to prevent a reasonably safe use of the street by others. * * * Anything which cannot be enjoyed without legal authority would be a mere privilege, which is generally evidenced by a license. * * * The use of the public streets of a city is not a privilege, but a right. Tiedeman on Limitation of Police Power (Sec. 281), says in distinguishing between license and a tax, 'It is, therefore, conclusive that the general requirements of a license for the pursuit of any business that is dangerous to the public can only be justified as an exercise of the *power of taxation;* or the requirement of a compensation for the enjoyment of a privilege or franchise.' * * * A license, therefore, implying a privilege, cannot possibly exist with reference to something which is a right free and open to all, as is the right of the citizen to ride and drive over the streets of the city without charge

and without toll, provided he does so in a reasonable manner."

In the case of Densmore *v.* City of Erie, 20 Penn. Co. Rep., 513, where the constitutionality of a bicycle license fee was in question, the Court said, in holding the fee a tax and unconstitutional, in reference to the right to use the streets;

> "The plaintiffs as well as all other resident bicycle owners and users of the same upon the streets of Erie City have an inherent and indefeasible right to use the streets of Erie."

To the same effect is Swift *v.* Topeka, 43 Kan., 671, where the question considered was the validity of an ordinance prohibiting bicyclists from riding across a public bridge in the city; it was said by the Court:

> "Each citizen has the absolute right to choose for himself the mode of conveyance he desires, whether it be by wagon or carriage, by horse, motor or electric car, or by bicycle or astride of a horse, subject to the sole condition that he will observe all those requirements that are known as the law of the road. This right of the people to the use of the public streets of a city is so well established and so universally recognized in this country, that it has become a part of the alphabet of fundamental rights of the citizen. While the tyranny of the American system of government very largely consists in the action of the municipal authorities, this right has not yet been questioned or attempted to be abridged. There can be no question then, but that a citizen riding on a bicycle in that part of the street devoted to the passage of vehicles is but exercising his legal right to

its use, and a city ordinance that attempts to forbid such use of that part of a public street, would be held void as against common right."

It was said by Judge Cooley, in Macomber *v.* Nichols, 34 Mich., 212:

> "When the highway is not restricted in its dedication to some particular mode of use, it is open to all suitable methods, and it cannot be assumed that these will be the same from age to age, or that a new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as before."

The right to use the highways in an automobile without first obtaining a license is exactly equal to the right to drive a horse, ride a bicycle or walk upon the highway.

In Wright *v.* Crane, 106 N. W., 71, Mr. Justice Montgomery, writing for the Michigan Supreme Court, says:

> "There is no doubt that owners of automobiles have the same rights in the streets and highways of the State that the drivers of horses have, but the right of either class is not to use the means of locomotion without regard to the right of others having occasion to travel on the highway. The degree of care required of either the driver of a horse of the chauffeur of an automobile is governed by the character of the agency employed."

Commonwealth *vs.* Stodder, 2 Cushing, p. 562, decided in 1848, by a Court of which Lemuel Shaw

was Chief Justice, is an instructive and guiding case.

Under the provisions of an act of the Legislature of Massachusetts, the Mayor and Aldermen of Boston had authority to make regulations as to the use of omnibuses and stage coaches for the transportation of persons for hire from Roxbury to Boston, and from Boston to Roxbury, while passing over and using the public streets of Boston, if, in the opinion of the Mayor and Aldermen, from the character of such vehicles, as to size, numbers, or mode of use, they would otherwise endanger or greatly incommode the public generally; and such regulations might prescribe certain streets as the route of travel for the vehicles mentioned in the same, and provide for their exclusion from certain other streets; provided, such regulations were necessary and expedient for the due regulation within the City of Boston of the omnibuses and other vehicles therein specified.

Assuming to act under this legislative authority, the Mayor and Aldermen of Boston adopted an ordinance requiring the payment of money as a license fee to the city by persons resident in Roxbury, who might set up and drive omnibuses and stage coaches from Roxbury to Boston and from Boston to Roxbury, for the convenience of persons for hire, as a tax or duty upon such vehicles, before so using the same.

The facts were, that the defendant was a citizen of Roxbury, drove an omnibus several times each day from the City of Roxbury through the public streets of Boston for the convenience of passengers for hire to and from Roxbury and Boston, and that he drove the same without any license from the Mayor and Aldermen of Boston.

It was held:

(1) That a by-law reasonably regulating the use of the public streets of Boston as to carriages of an unusually large size, or as to those which from the mode of using them would greatly incommode, if not endanger those having occasion to use such public streets, would be valid and legal; and that such regulations may prescribe certain streets as the route of travel for such vehicles and may provide for their exclusion from certain other streets.

(2) That inasmuch as the sum required to be paid by the City of Boston for a license was not confined to the amount necessary for paying the expenses incident to giving the licenses, but was so large as to be fairly considered a direct tax for revenue upon the vehicles to be used, the ordinance was unlawful and void.

With reference to the right of regulation as a police power, the court in its opinion made these observations:

> "Regulations of this nature are regulations as to the use of omnibuses and stage coaches, while passing over the public streets of the city, and are within the legitimate powers of the Mayor and Aldermen. The public safety and convenience of travelers may require regulations of this character. If new and unusual modes of transporting persons over the public streets are introduced, which, from the methods made use of for propelling the carriage, or the size of the vehicle, or the number of horses attached thereto, will obviously endanger the public safety, or so engross the whole width of the street as virtually to exclude all other vehicles, or greatly to obstruct

them in their passing thereon, it would certainly be reasonable and proper and within the legitimate powers of the Mayor and Aldermen, under the Statute already cited and the powers conferred by the city charter, to regulate the route of the streets over which such carriages were to run, and the rate of speed, and to interdict the stopping in the public streets unnecessarily, to the great hindrance and delay of those in the rear traveling the same route."

On the point that the license amounted to a tax for revenue, the court, among other things, had this to say:

"If the sum here required to be paid were a mere provision for paying the expenses incident to giving a license, as was apparently the statute of 1796, c. 32, requiring the payment of one dollar for each license, it might be unobjectionable, if the requiring the license was itself well authorized; but the dissimilarity in the sums required to be paid, varying as they do from one dollar to twenty dollars, for a vehicle, precludes us from any assumption of that sort. Nor can any such tax be sustained upon the ground suggested in the argument, that the sum levied is not more than sufficient to indemnify for the expenses incident to the supervision of hackney coaches, omnibuses, stages, etc. In no aspect in which we have been able to regard this part of the ordinance, can we view it in any other light than as an assessment of a tax upon the owners of these vehicles. As such, the court are of opinion, it was without legal authority, and as the obtaining of a license in all cases requires this payment,

the ordinance so far as it ordains that no person shall set up, use, or drive, in the City of Boston, any omnibus without a license from the Mayor and Aldermen under a penalty of not less than five nor more than twenty dollars, every time such carriage is used, is illegal and cannot be enforced."

The court further considered the right of the Mayor and Aldermen to forbid by ordinance residents in another town from using or driving an omnibus or stage from such other town to the City of Boston without a license from the Mayor and Aldermen of Boston supposing that no payment of money had been required, and held that no such power existed. Upon this point the language of the court is very instructive and interesting:

"The power claimed here, if really understood by the City Government to the extent embraced by the terms of the ordinance, would be the power to control every stage coach and vehicle used for carrying people for hire, though commencing its route at the most extreme limits of the commonwealth, and terminating its route in the City of Boston. Its purpose was probably much more limited, and had particular reference to the numerous lines of omnibuses running from the adjacent towns into the City of Boston. This mode of conveyance is only the conveying by stage coaches in an improved and more convenient vehicle. It is a system of great public convenience, furnishing facilities for passing from the adjacent cities and towns and ought not to be unnecessarily interfered with by the City authorities of Bos-

ton. The much greater part of whole route traveled may, and in some cases does, lie without the limits of the City of Boston. * * *

"The case before us is of a different character. The business of carrying persons for hire from town to town, in stage coaches and omnibuses, is not so far a territorial occupation or employment as will authorize the city government of Boston to require a license from the Mayor and Aldermen of Boston, before exercising that employment. A by-law, to that effect, is an unnecessary restraint upon the business of those carrying passengers for hire, and not binding upon inhabitants of other towns. For this reason the by-law must be held invalid as respects the defendant."

In Moses *v.* Pittsburg, Fort Wayne & Chicago R. R. Co., 211 Ill., 516, it is said:

"A street is made for the passage of persons and property and the law cannot define what exclusive means of transportation and passage shall be used. To say that a new mode of passage shall be banished from the streets no matter how much the general good may require it, simply because the streets were not so used in the days of Blackstone, would hardly comport with the advancement and enlightenment of the present age."

The use of such unusual vehicles as steam engines for the purpose of traction on an ordinary highway was not at common law *per se* a nuisance.

Attorney General *v.* Scott, L. R., 1 K. B. Div., 404 (1904), idem, L. R. 2 K. B. Div., 160 (1905);

McCarter, Attorney General *v.* Ludlam Steel and Springs Co., 1 Buch., 330 (1906);
Commonwealth *v.* Allen, 148 Pa., 358;
Coulter *v.* Township, 30 Atl. Rep., 490.

In McCarter *v.* Ludlam Steel and Springs Co. (*supra*), Vice Chancellor Pitney declared that a traction engine undoubtedly has a right to use the public highway for the purpose of hauling its material to and from its works and the railway station without payment of tolls or tax other than that included in its general tax; that its rights would be precisely the same in that respect if its works were outside the borough line. He added:

> "In this state we have never adopted the policy of attempting to equalize taxes on vehicles in accordance with the amount of their several users of the highways."
>
> (1 Buch., 339.)

POINT IV.

The imposition of license fees for revenue purposes, as is the fact under the statute in question, upon non-residents of the State of New Jersey passing through that State in a motor vehicle is violative of the Constitution of the United States, in that such non-residents passing through the State of New Jersey are engaged in interstate commerce, and the imposition of license fees for revenue upon them is a burden on interstate commerce and not within the power of the State of New Jersey to impose.

The third paragraph of the Eighth Section of the First Article of the Federal Constitution provides as follows:

> "The Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The invention and adoption of the steam vessel as a means of travel gave rise to one of the most important decisions of the Supreme Court concerning the extent and meaning of the commerce clause—and that decision is of vital importance in determining the questions of the present day arising from the invention and development of the motor vehicle.

The case is Gibbons *vs.* Ogden, 9 Wheaton, 1,

decided by the United States Supreme Court and the opinion delivered by Chief Justice Marshall. The question presented was the power of a State to grant a right to a steam vessel of navigating the waters within its borders to the exclusion of steam vessels licensed and enrolled under Federal law from navigating those waters.

Mr. Justice Marshall, in deciding the extent and power of Congress under the commerce clause, said (p. 188):

> "The words are 'congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes.' The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term applicable to many objects to one of its significations: commerce undoubtedly is traffic, but it is something more; it is intercourse."

That there would be no doubt about this meaning Justice Marshall said:

> "In pursuing this inquiry at the bar, it has been said that the Constitution does not confer the right of intercourse between State and State. That right derives its source from those laws whose authority is acknowledged by civilized man throughout the world. That is true. The Constitution found it an exist-

ing right, and gave to Congress the power to regulate it."

The extent of this decision is explained in the learned, prevailng and successful Brief of the Attorney General of the United States—submitted in the lottery cases—argued in the Supreme Court and reported in 188 U. S., 321, under the proposition "The Transit of Indivduals is Commerce."

> "Of Marshall's wonderful judicial qualities nothing is more striking than his accurate use of language, and to understand this illuminating decision we must consider the meaning of the word 'intercourse' as contrasted with 'traffic.' All traffic is undoubtedly intercourse, but all intercourse is plainly not traffic. Its full meaning is seen in derivative, for *'intercursus'* means a running between or intercommunication, which concept has no necessary relation to purchase and sale of commodities," citing Century Dictionary, Johnson's Dictionary, and giving various examples.

This leading case clearly established that commerce was simply intercourse, which means intercommunication between the people of one country with those of another, and those of one state with those of another, to wit, ingress and egress.

This definition of commerce was reaffirmed in the Passenger Case:

> 7 Howard, 283.

Mr. Justice Grier said:

> "Commerce as defined by this court means something more than traffic. It is inter-

course and the power committed to Congress to regulate commerce is exercised by prescribing rules for carrying on that intercourse."

Again in Gillman *vs.* Philadelphia, 3 Wallace, 713, the court adopted the definition established in Gibbons *vs.* Ogden, and on authority of that case held that the power of Congress included within its scope all navigation. Mr. Justice Clifford, dissenting from the result reached, but not from the opinion of the court upon the meaning of the word "commerce," said:

"Right of intercourse between state and state was a common law privilege, and as such was fully recognized and respected before the Constitution was formed. Those who framed the instrument found it an existing right, and regarding the right as one of high national interest, they gave to Congress the power to regulate it."

To the same effect is the case of

Pennsylvania *vs.* The Wheeling and Belmont Bridge Co., 59 U. S., 421.

Mr. Justice Nelson, writing for the court, said:

"We do not enter upon the question whether or not Congress possessed the power under the authority in the Constitution 'to establish post offices and post roads' to legalize this 'bridge'—for conceding that no such power can be derived from this clause, it must be admitted that it is at least necessarily included in the power conferred to regulate commerce among the several states. The regulation of commerce includes inter-

course and navigation, and, of course, the power to determine what shall or shall not be deemed in judgment of law an obstruction to navigation, and that power, as we have seen, has been exercised consistently with the continuance of the bridge."

That "commerce" under the Constitution included within its scope all general intercourse between the states without regard to barter or traffic was recognized and reaffirmed in the following cases:

County of Mobile *vs.* Kimball, 102 U. S., 691.

In which the court said that not only is the transportation of passengers commerce without respect to the purpose, but that the mere transit of persons and property is commerce. Mr. Justice Field, writing for the court said:

"Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property as well as the purchase, sale and exchange of commodities."

Lord *vs.* Steamship Co., 102 U. S., 541, 544.

In this case the court held that the passage of a vessel plying between two ports in the same state over an ocean route was commerce among foreign nations—although the vessel did no trading with vessels of foreign nations. The court held that the mere passage over the water

traversed by them was intercourse with foreign nations, and was, therefore, commerce. Chief Justice Waite said:

> "Commerce includes intercourse, navigation and not traffic alone. This also was settled by Gibbons *vs.* Ogden."

If there were any doubt which might have existed as to the extent of the commercial power of Congress, and that such power included as a subject of general regulation the transit and passage of persons from state to state, and all general intercourse of the citizens of the various states independent and apart from actual traffic and barter, it was effectually set at rest and removed by the decision of the case of

> Covington Bridge Co. *vs.* Kentucky, 154 U. S., 204-218.

The case involved the power of a state to regulate tolls upon a bridge connecting such state with another state without the assent of Congress, and without the concurrence of such other state in the proposed tariff. The tolls as imposed applied equally to all persons crossing the bridge, but the right of the state to impose any tolls was contested upon the ground that such a regulation was in interference with interstate commerce. This contention was upheld by the Supreme Court, and the state statute held unconstitutional. The opinion of the court, by Judge Brown, clearly and conclusively establishes that mere transit of individuals from one state to another irrespective of the method of locomotion, or whether they are engaged, or intend to engage in

traffic, or barter, is interstate commerce. The court said:

> "Commerce was defined in Gibbons *vs.* Ogden (9 Wheaton, 1) to be intercourse, and the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool."

Unless we say in accord with this case that interstate motor vehicle travel and transit is within the power of Congress to regulate under the commerce clause we in effect overrule the case, for if the passage of a citizen over a bridge leading from Cincinnati, Ohio, to Covington, Kentucky, is commerce, assuredly it can be no less commerce if a citizen pass from New York through New Jersey to Philadelphia or Washington in a motor vehicle.

The decision in the Covington Bridge case above was reaffirmed in the Lottery Cases, 188 U. S., 321, in which an Act of Congress which prohibited the mere carrying of lottery tickets from one state to another, by any one irrespective of the purpose of the carriage, was upheld as constitutional as a regulation of interstate commerce.

Mr. Justice Harlan, writing for the court, reaffirmed the above cited cases in respect of their definition of commerce and the opinion in the Covington Bridge Case, and said:

> "This reference to prior adjudications could be extended if it were necessary to do so. The cases cited, however, sufficiently indicate the grounds upon which this court has

proceeded when determining the meaning and scope of the commerce clause. They show that commerce among the states embraces navigation, intercourse, communication, traffic, the transit of persons and the transmission of messages by telegraph. They also show that the power to regulate commerce among the several states is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that such power is plenary, complete in itself and may be executed by Congress to its utmost extent, subject only to such limitations as the constitution imposes upon the exercise of the powers granted by it, and that in determining the character of the regulation to be adopted Congress has a large discretion, which is not to be controlled by the courts simply because in their opinion such regulations may not be the best or most effective that could be employed."

The scope of this decision is best explained by Mr. Justice Fuller in his dissenting opinion. He says:

"The naked question is whether the prohibition of the carriage of lottery tickets from one state to another by means other than the mails is within the powers vested in that body by the Constitution of the United States. * * * An invitation to dine or to take a drive or a note of introduction all become articles of commerce under the ruling in this case by being deposited with an express company for transportation. This, in effect, breaks down all the differences between that which is and

> that which is not an article of commerce, and the necessary consequence is to take from the states all jurisdiction over the subject so far as interstate communication is concerned. It is a long step in the direction of wiping out all state lines and the creation of a centralized government."

The principles which Mr. Justice Fuller discusses were not established by the decision in the Lottery cases alone, but by a long line of previous decisions, beginning with the leading case of Gibbons *vs.* Ogden.

Under the cases and authorities which have established beyond question the interpretation to be put on the commerce clause of the Federal Constitution, the passage of a citizen through the state from one state to another is interstate commerce. That was decided by Justice Marshall and that decision was confirmed unquestionably by the decision in the Lottery Cases. This has been held repeatedly in the case of vessels navigating interestate water-ways.

> Gibbons *vs.* Ogden, *supra;*
> Sinnot *vs.* Davenport, 22 How., 227;
> Moran *vs.* New Orleans, 112 U. S., 69;

and it has been extended to vessels navigating such waterways solely for the purposes of pleasure.

> Beldon *v.* Chase, 150 U. S., 674,

and the Supreme Court of the United States has held that the extent of the power of Congress under the commerce clause of the Federal Constitution is as broad in the case of interstate land highways as it is in the case of interstate water-

ways, and that intercourse upon the interstate roads and highways of the nation is just as much interstate commerce within the control of the Federal Government as intercourse on the interstate water-ways of the nation.

In re Debs, Petitioner, 158 U. S., 564.

In that case Mr. Justice Brewer, writing the opinion of the court, said:

> "It is said that the jurisdiction heretofore exercised by the national government over highways has been in respect to water-ways —the natural highways of the country—and not over artificial highways, such as railroads; but the occasion for the exercise by Congress of its jurisdiction over the latter is of recent date. Perhaps the first act in the course of such legislation is that heretofore referred to of June 14, 1866, but the basis upon which rests its jurisdiction over artificial highways is the same as that which supports it over natural highways. Both spring from the power to regulate commerce. The national government has no separate dominion over a river within the limits of a State; its jurisdiction there is like that over land within the same State. Its control over the river is simply by virtue of the fact that it is one of the highways of interstate and international commerce. The great case of Gibbons *vs.* Ogden, 9 Wheaton, 1, 197, in which the control of Congress over inland waters was asserted—rested that control on the grant of power to regulate commerce."

Under the statute in question license fees for revenue are imposed by the State of New Jersey

upon such commerce, and it has uniformly been held that no State has the power to impose a tax for revenue purposes on interstate commerce, and that such power is exclusively within the control of Congress and the Federal Government, and that any State law imposing such a tax is violative of the Federal Constitution.

There is no better or more authoritative statement of the limitation of the power of the States over interstate commerce than that of Mr. Justice Bradley in

Robbins *vs.* Shelby Taxing District, 120 U. S., 489, 493.

"The only way in which commerce between the states can be legitimately affected by state laws is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a state provides for the security of the lives, limbs, health and comfort of persons and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries, and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to the health or morals of the community; the imposition of taxes upon persons residing within the state or belonging to its population, and upon avocations and employments pursued therein, not directly connected with foreign or interstate commerce or with some other em-

ployment or business exercised under authority of the Constitution and Laws of the United States; and the imposition of taxes upon all property within the State, mingled with and forming part of the great mass of property therein. But in making such internal regulations a state cannot impose taxes upon persons passing through the state, or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the state from abroad, or from another state, and not yet become part of the common mass of property therein; and no discrimination can be made, by any such regulations, adversely to the persons or property of other states; and no regulations can be made directly affecting interstate commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject."

The decisions of the United States Supreme Court are clearly to the effect that neither licenses nor indirect taxation of any kind nor any system of state regulation can be imposed upon interstate any more than upon foreign commerce; and that any acts of legislation producing that result are to that extent unconstitutional and void.

"To carry on interstate commerce is not a franchise or privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; * * *

"The prerogative, the responsibility and the duty of providing for the security of the citizens and the people of the United States in relation to foreign corporate bodies or foreign individuals with whom they may have relations of foreign commerce, belong to the government of the United States, and not to the governments of the several States. * * * And the same is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceivable between the two."

Per Bradley, *J.*, in Crutcher *v.* Kentucky, 141 U. S., 47.

"We think it must be considered, in view of a long line of decisions, that it is settled that nothing which is a direct burden upon interstate commerce can be imposed by the State without the assent of Congress, and that the silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free."

Per Brewer, *J.*, in Brennan *v.* Titusville, 153 U. S., 289-302.

The subject of the decision in the latter case was an ordinance of a city requiring agents soliciting orders on behalf of manufacturers of goods to take out a license and pay a tax therefor. This was held to be, not a mere police regulation simply inconveniencing one engaged in interstate commerce and so only indirectly affecting the business, but a direct charge and burden upon that business. And it was declared that if the State may lawfully exact such tax, it may in-

crease the amount of the exaction until all interstate commerce in this mode ceases to be possible.

In addition to the above cases condemning a tax by a state upon interstate commerce, we might call the court's attention to the opinion of Mr. Justice McLean in the Passenger Cases, 7 Howard, 282. He said, in passing upon the question that the freedom of the various states is established by the commerce clause, and holding that no state had any right to impose a tax upon such commerce:

> "If this power to tax passengers from a foreign country belongs to a state, a tax on the same principle may be imposed on all persons coming into or passing through it from any other state in the Union, and the New York statute does in fact lay a tax on passengers on board of any coasting vessel which arrives at the port of New York with an exception of passengers in vessels from New Jersey, Connecticut and Rhode Island who are required to pay for one trip in each month. All other passengers pay the tax every trip. If this may be done in New York, every other state may do the same on all the lines of our internal navigation. Passengers on a steamboat which plies on the Ohio, the Mississippi or on any of our other rivers or on the Lakes may be required to pay a tax imposed at the discretion of each state within which the boat shall touch. And the same principle will sustain a right in every state to tax all persons who shall pass through its territory on railroad cars, canal boats, stages or in any other manner. This would enable a State to establish and enforce a non-intercourse with every other State."

Similarly in the case of Covington Bridge Co., 154 U. S., 204.

In this case the Supreme Court condemned as invalid the imposition of tolls upon an interstate bridge on the ground that it was a tax upon interstate commerce, and the court went so far as to say in that case that the people who passed and re-passed across that bridge irrespective of the purposes for which the passage was made were engaged in interstate commerce, and that a toll imposed upon them was an interference with such commerce and violated the Constitution of the United States.

The same rule was laid down in the case of Moran *v.* New Orleans, 112 U. S., 69, in which a state statute of Louisiana imposing a license fee between the Gulf of Mexico and the City of New Orleans on tow-boats was condemned as an interference with interstate commerce and void. The court held that the power of Congress to tax interstate commerce was exclusively a matter for Federal control and that a state law imposing such a tax was unconstitutional.

In the case of Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196, Mr. Justice Field, writing for the court, held that the regulation of interstate commerce was exclusively a matter for Congress, and said:

> "It needs no argument to show that the commerce with foreign nations and between the states, which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation. Congress alone therefore can deal with such transportation; its non-action is a declaration that

it shall remain free from burden imposed by State legislation. Otherwise there would be no protection against conflicting regulations of different states, each legislating in favor of its own citizens and products, and against those of other states. It was from apprehension of such conflicting and discriminating state legislation, and to secure uniformity of regulation that the power to regulate commerce with foreign nations and among the States was vested in Congress."

Under the above authorities the following propositions are clearly established beyond contravention:

First.—That interstate commerce consists not only of barter and traffic but of all interstate intercourse, including the transit of individuals from state to state, irrespective of the purpose of the intercourse or transit.

Second.—That such intercourse is commerce, whether it is upon the interstate waterways of the nation, or the interstate roads of the nation.

Third.—That, therefore the transit of a citizen in a motor vehicle from one state through another state is interstate commerce.

Fourth.—That the imposition of a tax for revenue purposes by a state upon such interstate commerce and intercourse and transit is a burden upon interstate commerce and violative of the Constitution of the United States, because under the Constitution the exclusive power to impose such a burden is vested in Congress.

Fifth.—That under the statute of New Jersey in question, a tax for revenue purposes is imposed upon interstate intercourse and transit in a motor vehicle, and the statute therefore imposes a burden upon interstate commerce and in so doing is violative of the Federal Constitution and void.

POINT V.

The statute in question is violative of the Constitution of the United States for the further reasons that

(a) It abridges the privileges of citizens of the United States. 14th Amendment, Section 1.

(b) It requires as a condition of granting licenses that citizens of other states shall authorize an agent in New Jersey to accept service of process in suits brought against such licensee, thereby further abridging their privileges as citizens of the United States, and denying to them the equal protection of the laws, by discriminating against them in respect to such suits in favor of residents of New Jersey.

The prosecutor is not a resident of New Jersey. He represents a class of citizens of the United States who are not the constituents of those who enacted this law. The property at which the taxation is aimed is not taxable in New Jersey as property because the *situs* of it is elsewhere, and for the purposes of direct taxation it is outside the jurisdiction of the state. The protection which the prosecutor invokes, therefore, is that afforded by the Federal Constitution to all the people of

all the states alike. Among the rights guaranteed to all citizens by that instrument is that of free ingress and egress to and from each and every part of the domain of the United States; the right to enter, travel through and pass out of the territory of any state without let, hindrance or the payment of any toll or tax. In this right is included the right to travel by horseback, by horse and wagon, by stage coach, or in any other recognized vehicle of transportation.

While so traveling he is subject only to the police laws of the state; to that reasonable regulation of the method of traveling, the rate of speed, etc., which the state may ordain in order to protect the safety, health or comfort of other people. While so traveling he is not subject to the state's power of taxation. The state cannot charge him a fee for the privilege of entering its borders or riding over its highways. It cannot make him pay for the wear and tear his vehicle causes to the road over which he goes, and it cannot tax his horse or vehicle for the purpose of keeping its highways in repairs.

Once concede the power of the state to tax for revenue the transient vehicle of a non-resident entering or passing through its confines and there is no limit to the amount that a state may in this matter impose.

> "The right to tax for revenue is the right of the government to take so much of the property of the person upon whom the tax falls as to such government may seem necessary for its public wants."
>
> Beasley, Chief Justice, in Erie Railway Co. *v.* The State, 2 Vroom, 531-543.

The right of citizens of the United States to enter and travel at will through the various states is expressly and emphatically affirmed in Crandall *vs.* State of Nevada, 73 U. S., 35.

The Legislature of Nevada enacted that "there should be levied and collected a capitation tax of one dollar upon every person leaving the state by any railroad, stage coach or other vehicle engaged or employed in the business of transporting passengers for hire."

The proposition considered by the court as expressed by Mr. Justice Miller in his opinion is the right of the state to levy a tax upon persons residing in the state who may wish to get out of it, and upon persons not residing in it who may have occasion to pass through it. The state of Nevada sought to uphold its statute upon the ground that there were but two provisions of the Constitution of the United States that could be assumed to be pertinent, namely, that which forbids any state without the consent of Congress to lay any imposts or duties on imports or exports and that which confers upon Congress the power to regulate commerce among the several states.

Having concluded that a citizen of the United States traveling from one part of the Union to another cannot properly be called an "export" it was held that the statute was not affected by the provision of the Constitution on that subject. Upon the other ground by a process of reasoning which is hardly in conformity to the later decisions of the same court, it was decided that the statute of Nevada did not violate the Interstate Commerce clause of the Federal Constitution. (See the comment on this case in State Freight Tax, 15 Wall, 82 U. S., 281.)

The court then proceeded to discuss the question upon the broad ground of the right of the Federal Government and the citizens of the United States to have free and unobstructed access through the different states, and decided that the statute was an unauthorized interference with the functions of the Federal Government, tending to impede or embarrass the constitutional operations of that government and the right which its citizens hold under it. The course of reasoning is, that inasmuch as the people of the United States constitute one nation having a central government in which all of them are deeply interested and that this government has a capitol established by law where its principal operations are conducted, and its legislature sits, this government has a right to call to this point any or all of its citizens as members of the Congress, of the courts and of the various offices; and this right cannot be made to depend upon the pleasure of a state over whose territory they must pass to reach the point where these services must be rendered. The government also has its offices of secondary import and its courts in all other parts of the country, with ports of entry on its seacoasts and rivers, its land offices in the interior, its revenue offices and its subtreasuries. In all these it demands the services of its citizens and is entitled to bring them to those points from all quarters of the nation, and no power can exist in a state to obstruct this right that would not enable it to defeat the purposes for which the government was established.

It was observed that the government having these rights on its own account, the citizen has also correlative rights of the same character. He

has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its seaports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several states, and this right is in its nature independent of the will of any state over whose soil he must pass in the exercise of it.

"The question of the taxing power of the states as its exercise has affected the functions of the Federal Government," said Mr. Justice Miller, "has been repeatedly considered by this court and the right of the states in this mode to impede or embarrass the constitutional operations of that government or the rights which its citizens hold under it has been uniformly denied." As authorities are cited:

McCulloch *v.* Maryland, 4 Wheaton, 316;
Brown *v.* Maryland, 12 Wheaton, 419;
Weston *v.* City of Charleston, 2 Peters, 449;
The Passenger Cases, 7 Howard, 282.

Chief Justice Taney in the Passenger Cases declared:

> "Living as we do under a common government, charged with the great concerns of the whole Union, every citizen of the United States from the most remote states or territories, is entitled to free access not only to the principal departments established at

Washington, but also to its judicial tribunals and public offices in every state and territory of the Union. * * * For all the great purposes for which the Federal government was formed, we are one people with one common country. *We are all citizens of the United States and as members of the same community must have the right to pass and repass through every part of it without interruption as freely as in our own states.* And a tax imposed by a state for entering its territories or harbors is inconsistent with the rights which belong to citizens of other states as members of the Union and with the objects which that Union was intended to attain. Such a power in the states could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

(See to the same effect, Harman *v.* Chicago, 147 U. S., 396.)

The requirement that non-residents, as a condition of the grant of a license, shall file with the Secretary of State a written authorization to accept the service of legal process is an unwarranted interference with the free right of travel on the highways and a gross discrimination against non-residents. If such a condition can be lawfully imposed upon non-residents desiring to travel through the state with motor cars, it can on the same principle be imposed upon the owners of horses and wagons. Non-residents are answerable to the laws of the state for their wrongful conduct while within its jurisdiction, but they cannot be required in advance of their entrance to give security to behave themselves, nor to agree to sub-

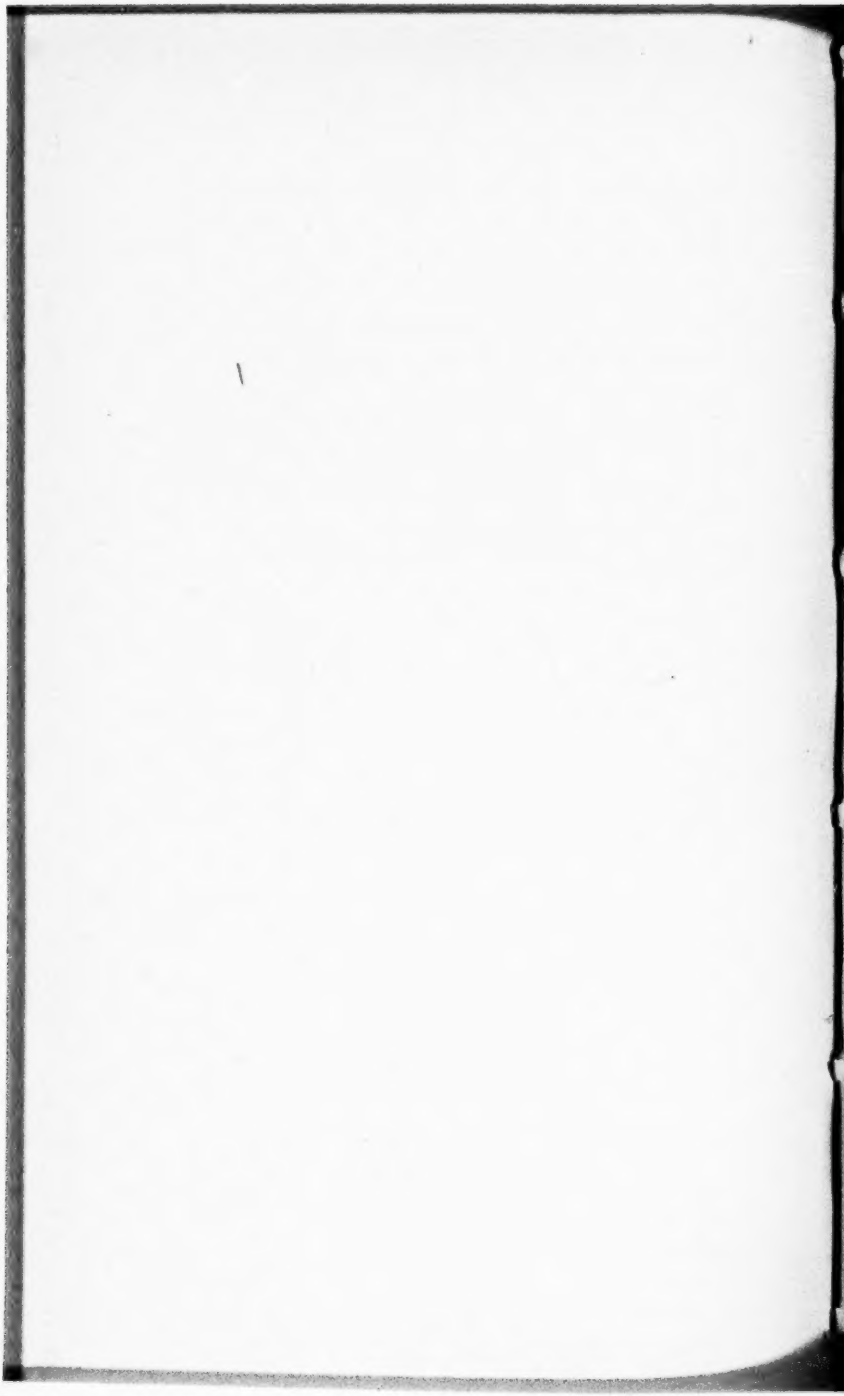
mit themselves to be sued in the state courts except as process may be served upon them in the same manner provided as to causes of action arising under other circumstances.

Barron *v.* Burnside, 121 U. S., 186;
Home Ins. Co. *v.* Morse, 20 Wall, 445.

All of which is respectfully submitted.

JOHN W. GRIGGS,
Attorney for Plaintiff in Error.

CHARLES THADDEUS TERRY,
On Behalf of Plaintiff in Error.



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Supreme Court of the United States

OCTOBER TERM, 1915.

No. 51

FRANK J. KANE,
Plaintiff-in-Error,
against
THE STATE OF NEW JERSEY,
Defendant-in-Error.

Brief for the State of New Jersey, Defendant-in-Error.

JOHN W. WESCOTT,
Attorney for Defendant-in-Error.

JOHN W. WESCOTT,
Attorney-General for New Jersey.

HERBERT BOGGS,
On Behalf of Defendant-in-Error.

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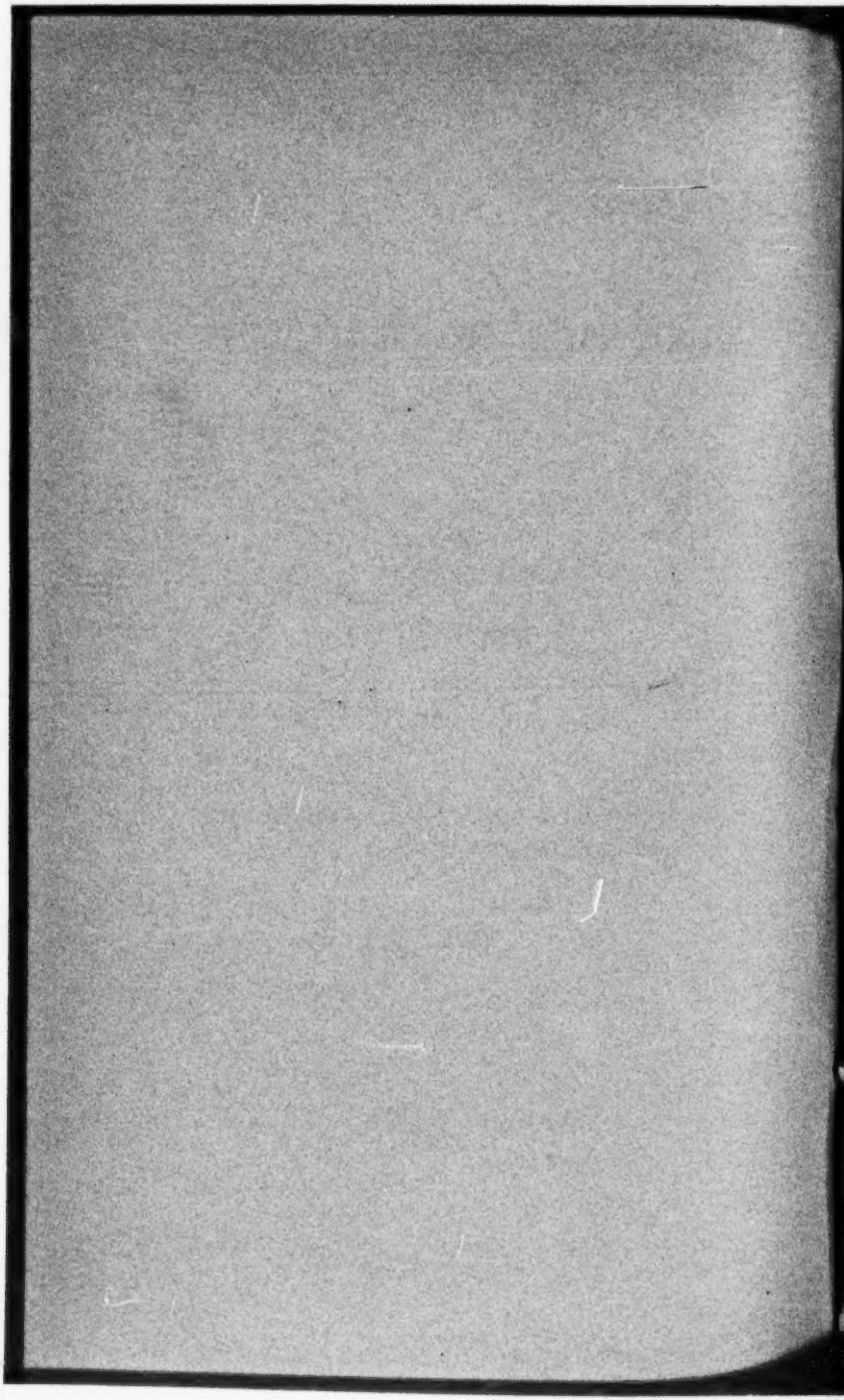

Supreme Court of the United States

FRANK J. KANE, *Plaintiff in Error,* *vs.* THE STATE OF NEW JERSEY, *Defendant in Error.*	In Writ of Error to the Court of Errors and Appeals of the State of New Jersey.

Brief for Defendant in Error.

STATEMENT.

The writ of error in this case is brought to review a judgment of the Court of Errors and Appeals of the State of New Jersey, affirming a judgment of the Supreme Court of the State of New Jersey, which judgment of the Supreme Court sustained the conviction of Frank J. Kane, the plaintiff in error, in the Recorder's Court of the City of Paterson, in the State of New Jersey, upon complaint of one Henry Titus, of violation of the 15th and 16th Sections of the Statute of the State of New Jersey, entitled "An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fee; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violation," approved April twelfth, nineteen hundred and six, as

amended April sixteenth, nineteen hundred and eight.

The facts of the case are fully and sufficiently set forth on page 2 of the brief for plaintiff in error, and, therefore, need not be here repeated. The sections of the said Statute of the State of New Jersey pertinent to this case, and claimed to be unconstitutional by the plaintiff in error, are correctly and fully set forth on pages 8 to 13, inclusive, of the brief of the plaintiff in error.

Section 15 of the Act, it will be noticed, prohibits the driving of a motor vehicle, the owner of which (resident or nonresident) has not complied with the provisions of Section 16 of the Act. Section 16 requires the owner of every automobile (resident or nonresident) before the same is driven on the public highways of New Jersey, to register it in the manner required by the Act, and to pay a registration fee rated according to the horse power of the automobile. It further requires a nonresident to file with the Secretary of State of New Jersey a duly executed instrument, constituting the Secretary of State and his successor in office the true and lawful attorney upon whom all original process in any action or legal proceedings caused by the operation of his registered vehicle within this State may be served, and agreeing that any original process against such owner, so served, shall be of the same force and effect as if served on the owner within the State of New Jersey. Section 37 provides that all moneys received in accordance with the provisions of the act, whether from fines, penalties, registration fees, license fees or otherwise, shall be paid over to the Treasurer of the State of New Jersey, to be used by the Commissioner of Public Roads, as a fund for the repair of such improved roads throughout the State as the said Commissioner shall designate, regard being

had to the repair of the most important improved roads; provided, however, that there shall be first deducted from the moneys so received the amount appropriated by the Legislature for the maintenance of the Department of Motor Vehicles, which sum so deducted is to become a part of the General State Fund.

The moneys received in accordance with the provisions of the Act, while they are paid into the General Treasury of the State, do not become part of the General State Fund. They are expressly set apart and appropriated to the repair of already improved roads of the State. Only the annual cost of the maintenance of the Motor Vehicle Department goes into the General Fund, to make good the State appropriation theretofore made for that purpose. All of the remainder of the moneys received under the operation of the Act are especially appropriated and set apart for the repair of the *improved roads* of the State.

The attack upon this Act is upon the validity of the requirement of registration and the payment of the registration fee before the automobiles of nonresident owners can be operated upon the highways of the State, and upon the further requirement that nonresident owners shall file with the Secretary of State a power of attorney to accept service of legal process.

It is contended by the plaintiff in error—

I. That the judgment and decision of this Court, in the case of *Hendrick* vs. *The State of Maryland*, is not controlling on this appeal.

II. That the plaintiff in error and other nonresidents of the State of New Jersey, passing through the State in a motor vehicle, are engaged in interstate commerce, and that the imposition of license fees upon such nonresidents so engaged in interstate commerce, is a burden on interstate commerce, and violative of the third

paragraph of the eighth section of the first article of the United States Constitution, providing that Congress shall have the power to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes.

III. That the Statute in question, in so far as it requires, as a condition granting licenses to citizens of other States, that they shall authorize an agent in New Jersey to accept service of process in a suit brought against them, violates Section one of the fourteenth amendment of the Constitution of the Unitetd States, in that it abridges their privileges as citizens of the United States, and denies to them equal protection of the laws, discriminating against them in respect to such suits in favor of residents of New Jersey.

Before entering upon a discussion of the questions thus raised, it is important that one fallacy of the argument of the plaintiff in error should be noted. It is a fallacy running through his brief, and affecting most materially the logic of his argument.

The plaintiff in error, in his brief, assumes that the fee required of residents and nonresidents of the State alike, whose automobiles shall be used upon the public highways, is a tax levied by the State upon the automobile. It is not a tax upon the machine either as property or otherwise; the owner of the machine can bring his property into the State, can own it in the State without being subject to a tax other than the tax that may be imposed upon property within the State. It is only when he uses his machine upon the public highways of the State that he becomes subject to the imposition of this fee. It is not levied upon the vehicle itself or upon its possession or ownership, but is collected only for the privilege of using such vehicle upon the public highways. A man may own any

number of vehicles, but if their use or operation is confined to his own or other premises, he will be subject to no fee or tax other than the personal tax based upon the assessment thereof.

I.

The case of *Hendrick* vs. The *State of Maryland*, 235 *United States* 610, is controlling on this appeal except upon the third point.

Four questions were raised by the plaintiff in error in that case. First—That that Maryland act discriminates against citizens of the District of Columbia. Second—That it attempts to regulate interstate commerce. Third—That it violates the rights of citizens of the United States to pass into and through the State. Fourth—That is exacts a tax for revenue—not merely compensation for the use and facilities—according to arbitrary classification and thereby deprives citizens of the United States of the equal protection of the law.

The Maryland act is, in its important features, similar to the New Jersey statute; it requires that before any motor vehicle can be operated on the highways of the State, the owner shall procure a certificate of registration and it fixes the registration fee according to the horse power. Six dollars for twenty or less horse power, twelve dollars for twenty to forty, and eighteen dollars for over forty. The driver is also required to have a license in addition to the certificate of registration required for the machine. The Maryland Statute also contains a provision for limited use of the highways without cost by residents of other States, by procuring from the Maryland Commissioner an identification tag or marker. This feature is not contained in the New Jersey Statute under review, although it has been since added.

This, the first question raised, this Court disposed of on the ground that the record failed to disclose that Hendrick had complied with the laws in force in the District of Columbia in respect to the registration of motor vehicles or that he had applied for the identification tag or mark entitling him to a limited use of the highways.

That question is not in this case.

The Maryland case, however, does expressly decide that the requirement of registration and payment of a registration fee based upon the horse power is within the power of the State, and is not a burden upon interstate commerce violative of the interstate commerce clause of the Federal Constitution.

Says this Court:

> "The movement of motor vehicles over the highways is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves. Their success depends upon good roads, the construction and maintenance of which are exceedingly expensive; and in recent years insistent demands have been made upon the States for better facilities, especially by the ever increasing number of those who own such vehicles. As is well known, in order to meet this demand and accommodate the growing traffic, the State of Maryland has built and is maintaining a system of improved highways. Primarily for the inforcement of good order and the protection of those within its own jurisdiction, the State put into effect the above prescribed general regulations including requirements for registration and licenses. A further evident purpose was to secure some compensation for the use of facil-

ities provided at great cost for the class for whose needs they are essential and whose operations over them are peculiarly injurious.

"In the absence of national legislation covering the subject a State may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horse power of the engines—a practical measure of size, speed and difficulty of control. This is but an exercise of the police power uniformly recognized as belonging to the States and essential to the preservation of the health, safety and comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce. The reasonableness of the States action is always subject to inquiry so far as affects interstate commerce, and in that regard it is likewise subordinate to the will of Congress.

"The prescribed regulations upon their face do not appear to be either unnecessary or unreasonable."

"In view of the many decisions of this Court there can be no serious doubt that where a State at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for determination by the State itself; and so long as they

> are reasonable and are fixed according to some uniform, fair and practical standard, they constitute no burden on interstate commerce. *Transportation Co.* v. *Parkersburg*, 107 U. S. 619, 699; *Huse* v. *Glover*, 119 U. S. 543, 548, 549; *Monongahela Navigation Co.* v. *United States*, 148 *U. S.* 312, 329, 330; *Minnesota Rate Cases*, 230 *U. S.* 352, 405; and the authorities cited. The action of the State must be treated as correct unless the contrary is made to appear. In the instant case, there is no evidence concerning the value of the facilities supplied by the State, the cost of maintaining them, or the fairness of the methods adopted for collecting the charges imposed, and we cannot say from a mere inspection of the statute that its provisions are arbitrary or unreasonable."

From this extract it is manifest that the case of *Hendrick* v. *Maryland* decides that in the absence of national legislation covering the subject, a State may prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of motor vehicles—those moving in interstate commerce as well as others. It may require the registration of such vehicles and the licensing of their drivers. It may charge therefor reasonable fees, graduated according to the horse power of the engines, which is a practical measure of size, speed and difficulty of control. All this is an exercise of the police power belonging to the States and does not constitute a direct and material burden upon interstate commerce. The reasonableness of the State's action is subject to inquiry, so far as it affects interstate commerce. But the action of the State will be treated as correct unless the contrary is made to appear.

The case also decides that where a State, at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor.

And it further decides that improved highways necessitated by the increasing number of these very vehicles are such special facilities.

In this case there is no contention that the charges fixed by the act are unreasonable. In fact, they are less than the charges fixed by the Maryland act sustained by this Court. They are fixed according to a uniform, fair and practical standard, graduated by the horsepower of the machine, and they, therefore, constitute no burden on interstate commerce.

There is no evidence in this case concerning the value of the facilities supplied by the State, the cost of maintaining them or the fairness or unfairness of the methods adopted for collecting the charges imposed.

In the absence of such evidence the Court will not undertake to say that the charges fixed by this statute—less than those fixed by the Maryland statute—are arbitrary or unreasonable.

The Maryland case also decides that a statute prescribing registration and the payment of a registration fee by nonresidents passing through the State in automobiles, does not directly interfere with the right of nonresident citizens to pass through the State. It expressly decides that the case of *Crandall* v. *Nevada*, 6 *Wall.* 35, is not in point.

The case also decides that the Maryland statute and this statute are not mere revenue measures, and are, therefore, not subject to criticism on the ground of classification.

The decision of this Court in the case of *Hendrick* v. *the State of Maryland* is decisive upon the contention

of the plaintiff in error, that the imposition of these license fees is a burden on interstate commerce, and violative of the interstate commerce clause of the United States Constitution.

II.

The Court of Errors and Appeals of New Jersey, in its opinion in this very case, held that the proofs taken in the case satisfactorily show that the present automobile law (this statute of 1908) is a revenue measure. (For opinion, see Transcript of Record, p. 46). As the highest Court of the State on this point agrees to an extent with the contention of plaintiff in error, it may well be admitted that while the statute is enacted in exercise of the police power of the State, it also is a revenue measure, although not a *mere revenue measure,* and not, therefore, subject to attack on the ground of classification.

But, notwithstanding the fact that these registration fees are thus imposed for revenue, as well as to cover the cost of regulation, it is within the power of the State to so legislate, and the statute is not for that reason invalid.

The Court of Errors and Appeals expressly so hold in its opinion, approving and following, to that extent, the opinion of the Supreme Court of New Jersey in *Cleary* v. *Johnston,* 79 *N. J. L.* (50 *Vroom*) 49 where the same question was involved as in this case.

It may be admitted as a settled principle of law that where power is only granted to license, fees cannot be exacted beyond the reasonable expense of issuing the license and regulating the thing licensed. The cases cited in the brief in this Court of counsel for plaintiff in error undoubtedly sustain this principle, but they go

no further, and are not in point to the question under discussion.

These cases cited are all cases where municipalities had been granted power to license, and it was held that the power to license thus granted did not include the power to tax for revenue, such power not being expressly given.

But this line of cases does not establish the inability of the Legislature to impose license fees as taxes for revenue, nor to delegate such power to municipalities.

Thus in *North Hudson Railway Co.* v. *Hoboken*, 41 *N. J. L.* (12 *Vroom*) 71, the City of Hoboken attempted, by ordinance, to compel the railroad company to pay an annual license fee of $15.00 for each one-horse car and $25.00 for each two-horse car. The New Jersey Court of Errors and Appeals, indeed, held the ordinance to be invalid, but it was expressly so held because the Legislature had not conferred power upon the city council to impose a license fee for revenue. Mr. Justice Depue, writing the opinion of the Court, said:

> "Nor can the authority of a municipal corporation to exercise what is in substance the power of taxation be deduced from a grant of power to license specifically. A power to license is of the same nature as a power to regulate. Under a charter authorizing the regulation of a business or occupation an ordinance compelling persons engaged in such business or occupation to take out licenses may be adopted, if the license is an appropriate method of regulating the prosecution of the business * * * The exaction of a license fee for revenue purposes is clearly an exercise of the power of taxation, and cannot be sustained unless the charter plainly shows an intent to confer that power."

And see *Cooley Const. Lim.* 201; 1 *Dill. Mun. Corp., Sec.* 291.

The learned Justice further observes, in the same opinion:

> "If the power be granted with a view to revenue, the amount of the tax, if not limited by the charter, is left largely to the judgment and discretion of the municipal authorities."

In *Mulcahy* v. *Newark*, 57 *N. J. L.* (28 *Vroom*) 573, it was held that the act under consideration delegated the licensing power as a revenue measure and was valid, but that the ordinance passed in pursuance thereof was invalid, as not conforming to the statute. *Johnson* v *Asbury Park*, 60 *N. J. L.* (31 *Vroom*) 427, is to the same effect.

The other cases cited by counsel for plaintiff in error —*Laundry License Case*, 22 *Fed. Rep.* 701; *Telegraph Co.* v. *Philadelphia*, 82 *Fed. Rep.* 797; *Commonwealth* v. *Stodder*, 2 *Cush.* 562; *Boston* v. *Schaffer*, 9 *Pick.* 415; *Chilvers* v. *People*, 11 *Mich.* 43; *Adams Express Co.* v. *Owensboro*, 85 *Ky.* 265—are all cases turning upon the grant of power to a municipality and the extent of the power granted.

Pichard v. *Pullman South. Car Co.*, 117 *U. S.* 34, was decided wholly upon the question of whether the fee imposed was upon interstate commerce, and has no bearing upon this point.

The power of the Legislature to impose license fees for revenue and to delegate this power to municipalities is undoubted.

Cape May v. *Cape May Transportation Co.*, 64 *N. J. L.* (35 *Vroom*) 80;

Morgan v. *Orange*, 50 *N. J. L.* (21 *Vroom*) 389;

Thurlow Med. Co. v. *Salem*, 67 *N. J. L.* (38 *Vroom*) 111;

Buck v. *Douglass*, (N. J.), 65 *Atl.* 848;

Johnson v. *Loper*, 46 *N. J. L.* (17 *Vroom*) 321, *at p.* 325;

Boston v. *Schaffer*, *supra*;

Commonwealth v. *Schaffer*, *supra*;

Adams Express Co. v. *Owensboro*, *supra*.

And this Court has so repeatedly decided.

Postal Tel. Cable Co. v. *Charleston*, 153 *U. S.* 692;

Home Ins. Co. v. *City Council*, 93 *U. S.* 116, 122.

In *Gundling* v. *Chicago*, 177 *U. S.* 183, this Court said:

> "It is not a valid objection to the ordinance that it partakes both of the character of a regulation and also that of an excise or privilege tax. The business is more easily subjected to the operation of the power to regulate where a license is imposed for following the same, while the revenue obtained on account of the license is none the less legal because the ordinance which authorized it fulfills the two functions, one a regulating and the other a revenue function. So long as the State law authorizes both regulation and taxation it is enough, and the enforcement of the ordinance violates no provision of the Constitution."

Nor is the imposition of such taxes by way of license fees contrary to Article IV, Section VII, placita 12, of the New Jersey Constitution, requiring property to be assessed for taxes under general laws, and by uniform rules, according to its true value. A license tax or fee is not a property tax within the meaning of this Constitutional provision.

Johnson v. *Asbury Park*, 29 *Vroom* 604, *affirmed* 31 *Id* 427.

Standard Underground Cable Co. v. *Atty. Gen.*, 1 *Dick. Ch'y* 270.

State v. *Corson*, 38 *Vroom* 178.

A nonresident cannot complain of such a license tax unless discriminated against in favor of a resident.

Morgan v. *Orange, supra.*

The fees provided for in and by this statute under consideration are the same for resident and nonresident. There is no discrimination.

If, then, the fees imposed by the statute are in the nature of fees for revenue, the imposition is within the power of the State Legislature, and the act is not, for that reason, invalid.

It is further argued on this point that if these charges are justifiable it is only by reason of the special damage they cause to highways, and this would require a similar license upon all vehicles using the highway based upon the extent of injury caused. The statute, therefore, it is contended, results in an unconstitutioned discrimination between different classes of vehicles.

But such discrimination is not arbitrary; it is only reasonable in view of the well-known facts of general and public knowledge of which the courts must take cognizance. It needs no testimony to make it apparent that the operation of these large, heavy and swiftly-moving vehicles over the public roads must result in their rapid deterioration, a deterioration out of all proportion to that caused by horse-drawn vehicles or vehicles of other kinds or classes. It is matter of common knowledge that the wear upon roads caused by all other kinds of road vehicles is a purely negligible quantity as compared with the damage caused by automobiles. It is not unreasonable, or is it unlawful, that those who so largely cause the deterioration of the highways should specially contribute to their upkeep. The dis-

crimination complained of, if it can justly be called such, cannot be regarded as a class distinction. It is based upon the reason of the thing, and is a valid one.

The courts have repeatedly sustained such legislation.

The Supreme Court of Illinois upheld an ordinance requiring certain teamsters engaged in a certain business to pay a license, saying:

> "From the extent and character of his business, these teams must have passed and repassed almost constantly. This, then, renders the repair of the streets more expensive and more necessary from the fact that his vehicles seem to be large and of considerable weight. For the comfort and convenience of the citizens of the place, as well as persons not residing therein, but traveling on its streets, it is necessary that they should be repaired and kept in good condition."
>
> *Gartside* v. *East St. Louis*, 43 *Ill.* 47-51.

For the purpose of imposing a license tax, motor vehicles may be placed in a class by themselves, as distinguished from horse-drawn vehicles.

Helena v. *Dunlop*, 102 *Ark.* 131; 143 S. W. 138.

Ex parte Schuler, Cal.; 139 *Pac.* 685.

Jackson v. *Neff*, 64 *Fla.* 326; 60 *So.* 350.

Graves v. *Jones*, 18 *Ohio, C. C.* (*N. S.*) 488.

State v. *Ingalls, N. M.;* 135 *Pac.* 1177.

This Statute now before this Court does not in any sense or way prohibit or restrict the use by the classes of vehicles within its purview. It only imposes a toll for a *greater use, a use especially detrimental to the highway and caused by the peculiar nature and speed of these classes of vehicles.*

III.

The right of a citizen of another State, equally with a citizen of New Jersey to travel upon the highways of the State is not denied, nor is it maintained that this right may be arbitrarily denied or abridged by the Legislature of the State. But this right is not an absolute right; it may be regulated and its exercise restricted in the interest of the general public, in the interest of safety and of the common good and common convenience. Nor can it be argued that an automobile, uncontrolled and unrestricted, is not a dangerous engine. The numerous laws existing in nearly every State, imposing most stringent restrictions upon this class of vehicles, restrictions more severe than those imposed upon other kinds, laws which have received the highest judicial approval, abundantly prove that they are regarded as dangerous, and that their right to use the public highways is not an absolute right.

The cases cited in the brief of plaintiff in error upon this point only go to this extent; that an automobile upon a public highway is not *per se*, dangerous, or a nuisance, regardless of the manner of use and management, and all this may be conceded without adding force to the argument. Nor is it contended that the rights of these vehicles upon the public highways are not equal to those of other kinds of vehicles.

None of the cases cited are authority for the doctrine that the Legislature of a State may not limit the use of its highways to particular classes of vehicles, nor impose tolls for their use upon classes of vehicles particularly detrimental to their upkeep.

McCarter, Attorney-General, v. *Ludlam Spring and Street Co.*, 71 *N. J. Eq.* (1 *Buchanan*) 330, a decision

by Vice-Chancellor Pitney, in the New Jersey Court of Chancery, is certainly not in point. The Court held, there, that the use of a steam traction engine and trailers in the streets of a city is not *per se* a nuisance, but it further held that where its operation was specially injurious to the highway it would be required to make repairs, and would be enjoined from using a street which had never been so constructed as to render it fit for heavy travel. It is true the learned Vice-Chancellor remarked in passing (page 339): "In this State we have never adopted the policy of attempting to equalize taxes on vehicles in accordance with the amounts of their several users of the highways." But he does not say or indicate that the Legislature is without power to adopt, in its discretion, such a policy.

Nonresidents have no greater rights in the public highways of a State than its own citizens, and regulations of the use and restrictions upon the use, valid as to citizens, cannot, therefore, be invalid as to nonresidents, where such limitations apply to both alike.

IV.

Plaintiff in error was not engaged in interstate commerce.

Interstate commerce comprehends navigation, traffic, buying and selling and interchange of commodities, the general intercourse of the people of one State with those of another State, and the transportation of passengers as well as of goods and commodities; and the power to control and regulate this commerce is vested by the Federal Constitution in Congress. So Congress has control over the instrumentalities of this commerce by which it is carried on. A navigable interstate

waterway, an interstate road or highway, a bridge spanning a river, the boundary between two States, and carrying over the river an interstate highway, are all instrumentalities of interstate commerce and within the regulative control of Congress. But plaintiff in error carries his argument further than this and contends, as he is forced to do, that a mere pleasure journey from one State to another State is interstate commerce, and the vehicle in which the journey is made an instrumentality of interstate commerce. Plaintiff when arrested was engaged in a pleasure journey in his own vehicle, which would eventually lead him into the neighboring State of Pennsylvania, and this he claims was interstate commerce.

There is nothing in the proofs indicating that he was actually engaged in commerce or business of any character when arrested, or that his automobile was, or could have been, used for other than pleasure purposes, and in the absence of such proof, and in view of the common and well known use of automobiles, the only inference is that the trip was a purely pleasure one. Commerce, it is submitted, is more than pleasure. Its fundamental meaning is business, a mere pleasure trip by a citizen of one State through another State, in his own pleasure vehicle cannot, by any stretch of the fundamental meaning of the word, be regarded as commerce or commercial intercourse, nor the vehicle so used as an instrument of commerce. No case, it is confidently asserted, can be found supporting such a doctrine. None of the cases cited by counsel afford the slightest countenance to such a doctrine.

In *County of Mobile* v. *Kimball*, 102 *U. S.* 691, the transit of persons and property, spoken of by Mr. Justice Field, as commerce, was unquestionably the carrying of persons and property as a business. So, in

Lord v. *Steamship Co.*, 102 *U. S.* 544, it was decided that a vessel plying between two ports of the same State over an ocean route was engaged in foreign commerce, although the vessel did not trade with foreign nations; but that case did not decide that passengers upon that vessel travelling for pleasure were engaged in foreign or interstate commerce.

Covington, &c., Bridge Co., v. *Kentucky*, 154 *U. S.* 204, turned upon the status of a bridge over the Ohio River, connecting the two States of Ohio and Kentucky. This Court, by a majority vote, held the bridge to be an instrument of interstate commerce and the traffic over it interstate commerce, and that Congress alone had power to regulate the traffic and to fix the tolls. The status of individual users of the bridge was not passed upon. True the Court said that the thousands of people who daily passed and repassed over the bridge might be said to be engaged in commerce, but the Court was speaking of and considering the great mass of users and the general use; it certainly did not decide that mere pleasure seekers using the bridge were engaged in interstate commerce. It is not authority for the proposition that a mere pleasure journey through a State is interstate commerce, and the vehicle in which it is made an instrument thereof.

The *Lottery Cases*, 188 *U. S.* 321, are based upon the same principle. There must be an element of business to constitute commerce. In that case the lottery tickets were being caried as a business or in aid of the lottery business. The very remark quoted from Chief Justice Fuller's dissenting opinion shows this. He says, "An invitation to dine or to a drive or a note of introduction all become articles of commerce under the ruling in this case by being deposited with an express company for transportation." *It is the transportation for hire as a business that make them articles of commerce.*

Beldon v. *Chase*, 150 *U. S.* 674, does not hold that pleasure vessels navigating interstate waterways are engaged in interstate commerce. That case dealt with the rules regulating the navigation of vessels. It held, interpreting those rules, that a pleasure yacht was an ocean going, as distinct from a river or harbor vessel, and that the rules relating to the navigation of such vessels applied to it. Nowhere in that case does this Court enunciate the doctrine that a pleasure vessel is a vessel engaged in commerce.

Whether an auto vehicle used for business, an auto truck—actually transporting goods or passengers—is engaged in commerce, and whether such a vehicle passing through the State, or coming from one State into another, would be engaged in interstate commerce, and whether the statute would as to it, or its owner, be invalid as imposing a burden upon interstate commerce, need not be considered. The plaintiff in error was not engaged in interstate commerce, the statute as to him imposed no illegal or undue burden; as to him it is valid. He cannot be heard to complain that it affects the rights of, or imposes an illegal burden upon others, so long as his own constitutional rights are not affected or denied.

It is not apparent from the record that plaintiff in error was actually engaged in interstate commerce. From the record it only appears that he was on his way from the City of New York to the Delaware Water Gap, a point in Pennsylvania. From this alone it cannot be assumed that plaintiff in error was engaged in interstate commerce.

V.

Assuming, however, in the discussion of this point, that plaintiff in error at the time of his arrest was

engaged in interstate commerce, the Statute of 1908 is not a regulation of commerce between the States, within the meaning of the commerce clause of the United States Constitution, and is not obnoxious to that constitutional provision.

This is the express ground upon which the Court of Errors and Appeals of New Jersey sustained the conviction and judgment in the Recorder's Court.

The statute affects interstate commerce, but the States may do this without violating the Federal restriction.

The State may establish wharves, levees and landing places upon navigable waters and establish tolls for their use even by vessels engaged in interstate commerce.

Transportation Co. v. *Parkersburg*, 107 *U. S.* 691.

Improve the navigation of streams within its borders and charge tolls for the increased facilities, although this may increase the inconvenience and expense of those using it and although the river may be a highway of interstate commerce. How the highways of a State, whether on land or by water, shall best be improved for the public good is a matter for State determination.

Huse v. *Glover*, 119 *U. S.* 543.

In *Monongahela Nav. Co.* v. *United States*, 148 *U. S.*, reference is made to the cases of *Kellogg* v. *Union Co.*, 12 *Conn.* 6, and *Thames Bank* v. *Lowell*, 18 *Id.* 500, as containing very satisfactory discussions of this subject.

In *Kellogg* v. *Union Company* the Supreme Court of Connecticut held that the power of a State to improve the navigation of a navigable river, within its boundaries, between a port of entry and a port of delivery established by act of Congress upon that river, and to provide for the expense of such improvement by a

grant of tolls on a description of vessels passing up and down the river, which without such improvement could not ordinarily pass, does not conflict with the power of Congress to regulate commerce, and such grant of tolls, therefore, is not void as repugnant to the Constitution of the United States.

The Court, in that case (at page 22 of the report), uses this language, directly applicable to the case under consideration:

> "Congress has power under the Constitution to establish post-offices and post-roads; and there is, perhaps, no power that has been more frequently or more extensively exercised. And hardly less extensive has been the legislation of the States incorporating turnpike companies, and empowering them to exact tolls, not only upon merchandise, but upon vehicles transporting the United States mail. The power of the State to do this has never been doubted, and was, indeed, conceded in the argument. Nor has it ever been questioned that a State has power to construct a canal within its territory and to impose a toll upon merchandise transported upon it. And is there any well-founded distinction between these cases and the one under consideration?"

And again, most pertinent to this case, the Court says:

> "A distinction was, indeed, taken at the bar. It was said that these are artificial channels of communication, but that a river is a natural one and open of right to all. This is true, and it is equally true that the title to this natural channel of communication is in the State, and that it constitutes a portion of its territory.
>
> "The argument, then, involves this palpable absurdity that although a State may construct a

turnpike road leading from one post-office to another, and impose a toll upon all vehicles passing over it, yet it has no power to improve a natural channel of communication within its territory, and to which it has an undoubted title, and to impose a toll upon merchandise passing to and from a port of delivery."

In *Monongahela Nav. Co.* v. *United States, supra,* this Court quotes, approvingly, from the decision in *Thames Bank* v. *Lowell,* 18 *Conn.* 511, at p. 333 of the U. S. Report:

"These acts improving rivers, constructing roads, etc., will never be complained of as interfering with the rights and powers of Congress. The tolls alone are the subject of complaint. But these are only the fair equivalent for the privileges which the State has the right to create, and without which these privileges could never have existed. Commerce, therefore, has not been crippled by the tolls, as the defendant claims, but has been extended by them. The Legislature of the State creating this corporation, with its duties and privileges, has come in aid of the power of Congress.

"It seems to be admitted that the States may construct canals, turnpikes, bridges, etc., and impose tolls upon passengers and freight as a remuneration for the improvements, and that this may be done without interfering with the power of Congress to regulate commerce among the States, or its power to establish post-offices and post-roads."

The following authorities support the same doctrine:

"The freedom from imposition guaranteed by the Constitution (upon interstate commerce) does not, of course, imply exemption from

reasonable charges as compensation for the carriage of persons in the way of tolls or fares, or from the ordinary taxation to which other property is subjected, any more than like freedom of transportation on land implies such exemption. Reasonable charges for the use of property, either on land or water, are not an interference with the freedom of transportation between the States."

Encyc. of United States Supreme Court Reports, Vol. 7, p. 367, and cases there cited.

From these authorities, and numerous others that might be cited, it is apparent that a State may construct roads and highways, wharves, docks, canals and improve the navigation of rivers and make reasonable charges as tolls as compensation for the use thereof, without interference with the freedom of commerce between the States. Such tolls, while indirectly they affect commerce, are not burdens within the meaning of the interstate commerce clause of the Constitution. And a State may do these things because, having expended capital, either itself, or by agencies created by it, and increased the facilities of commerce, interstate or intrastate, it is entitled to a fair remuneration for its outlay and for the maintenance of these public works. Commerce is not crippled or burdened by the tolls, but is aided and extended by them. The Legislature of the State, by constructing and maintaining these public works, is not usurping, but is coming to the aid of the power of Congress. The power of the State to create corporations to construct public roads and to authorize the imposition of tolls for their maintenance and use is undoubted. It cannot be maintained for an instant that these public roads, open as they are to all the public, upon payment of fixed tolls,

can be used by a vehicle bringing merchandise from another State, or by a pleasure party riding through the State, without payment of the toll because they are engaged in interstate commerce.

What a State may do indirectly it may do directly. If it can create a corporation and endow it with power to construct a public road and to charge tolls for its use, it can itself construct and improve its own roads and charge reasonable tolls for their use.

The State of New Jersey has constructed a vast number of new roads; it has also improved a great number of existing roads. It has expended millions on these roads, and the expensive construction of recent years has been caused wholly by the automobile. The use of these heavy and swiftly propelled vehicles superseding, as they have, the old horse-drawn vehicle, has rendered the old Telford construction of crushed stone wholly inadequate. This old construction is wholly unable to withstand this traffic. Vastly expensive methods have been necessitated, involving the initial expense of millions and a yearly expense of hundreds of thousands of dollars for maintenance, and all this great and constantly increasing expense is directly caused by and is chiefly for the benefit of this kind of vehicles.

The State has decided that this abnormally destructive use by this class of vehicles should no longer be free to them, and it imposes upon all of this class of vehicles a toll for their use. It exempts horse-drawn vehicles for the very good reason that their use of the roads is not abnormally destructive and they alone would not necessitate this great cost for construction or for upkeep. The toll is regulated by the horse-power: $3.00 per year for ten horse-power or less; $5.00 for ten to twenty-nine horse-power, and $10.00 for all over

thirty horse-power. The charge is thus reasonably and properly graded by the degree of use and the increase of damage due to the weight and swiftness of the machine. It is in no sense prohibitive, nor is it excessive.

The statute is impartial. The toll is imposed alike upon resident and nonresident, for vehicles used for pleasure and for commerce. There is no discrimination against the nonresident, or in favor of the resident. All are treated alike. The payment of the fee entitles the owner, resident or nonresident, to use his machine upon the roads of the State to the fullest extent possible for the year covered by the registration. The exemption of the owner of horse-drawn vehicles from this registration fee is reasonable and not unfairly discriminative. It is based upon the greater use the owner of the machine obtains in the increased facilities afforded and in the great expense the State is put to by this use, an expense not caused to an appreciable degree by the lighter and slower-moving vehicle.

The nonresident has no legal right to the free use of the roads, when the resident is required to pay. He can only complain where he is discriminated against.

This charge cannot be regarded as a special road tax. It is not a tax upon property or upon occupations. It is a license tax, or, more properly, a toll imposed for the special use of the public facility and the especial damage caused by that use. The exemption of the horse-drawn vehicle is analogous to the exemption of a vessel of less than a certain draft from tolls for use of an improved river, the natural unimproved river being usable by vessels of this lighter draft, just as the unimproved or less expensive improved road is by the horse vehicle.

Kellogg v. *Union Company*, 12 *Conn.* 6.

It is not claimed that the charge is unreasonable, nor could it be so regarded.

The charge is an annual one for the use of the State highways at pleasure and to the fullest extent for the year, instead of a mileage fee. But this is not constitutionally objectionable, and is within the power of the Legislature.

The Legislature may prescribe any method for measuring the privilege it bestows.

Home Insurance Co. v. *New York*, 134 *U. S.* 594.

The only limit is upon the reasonableness of the charge.

VI.

It is also contended that section sixteen of the act requiring nonresident citizens to designate the Secretary of State of New Jersey as their attorney upon whom all original process in any action or legal proceeding caused by the operation of the automobile within the State of New Jersey may be served, is unconstitutional as abridging the privileges of citizens of the United States, and denying them the equal protection of the laws, by discriminating against them in respect to such suits and in favor of residents of New Jersey.

The fallacy of the argument of plaintiff in error upon the objection that it abridges his privilege as a citizen of the United States is due to his total misconception already pointed out—a misconception apparent throughout his brief—of the nature and character of the toll or privilege tax imposed by the fifteenth section of the statute.

This imposition is not a tax upon the machine, either as property or otherwise; it is not a tax upon the individual owner upon his entrance into the State. It bears not the remotest relation to head money, or a head tax. It is not a tax upon his right to travel in the State, or to bring his property therein.

Crandell v. *State of Nevada, 6 Wall.* 35, is not in point. There the State sought to impose a head tax upon citizens of other States passing through the State, and citizens of Nevada endeavoring to leave the State, and the statute was held invalid upon broad constitutional grounds.

But no attempt is made by this statute to impede or tax either entrance into or egress from the State. All persons are as free to come and go as before the statute was passed. Nor is any embargo or tax put upon the bringing into the State of any class or kind or property. All the statute prescribes is that a certain class of vehicles cannot be used upon the highways specially improved by the State with State funds to meet the needs of that class, without paying a toll for their use as some compensation for the especial damage caused by such use.

The second objection, that this requirement discriminates against nonresidents and in favor of residents, is fully discussed and answered by the Supreme Court of New Jersey in *Cleary v. Johnson, 79 N. J. L.* (50 *Vroom* 49), at *page* 57, and the reasoning of the Court in that case is referred to and adopted by the Court of Errors and Appeals in its opinion in the case at bar.

This provision in the New Jersey Statute may have been suggested by a similar provision in the New Jersey Statute relating to foreign corporations licensed to do business in the State of New Jersey.

The licensing of foreign corporations to do business in a particular State, it is true, is a mere privilege and in no sense a right; while, on the other hand, the right of a citizen of another State to travel over the highways of the State of New Jersey, is more than a privilege.

Assuming that the right to use the highways of the State belongs to such nonresident owner, yet is is ob-

viously not an absolute right. The stringent legislative restrictions upon the use of highways by automobiles—restrictions which have received judicial approval in the Courts of nearly all of the States of the Union and also in this Court—are conclusive of the fact that the automobile is regarded as a dangerous engine, *if used otherwise than under the control provided by legislation.*

It must also be apparent that the restrictions upon the manner in which highways shall be used by automobiles can only be made effective by penalties, and such penalties can only be enforced by reaching the owner of the machine.

Undoubtedly, a provision for impounding the machine would be valid, but it would be inefficacious, because the speed of the automobile is such as in most instances to escape arrest. Resident owners can be reached by service of process within the State, while nonresident owners, unless by voluntary appearance, are immune from service. Thus while legal proceedings to enforce the penalties for violating the automobile law can be taken in the Courts of this State against residents; as to nonresidents, in the absence of a provision like the one in the New Jersey Statute, the enforcement would mean numerous suits in other States in the Union from New York to California, or perhaps in Canada or other Continents. In view of the need of a vigorous enforcement of the laws regulating the use of the highways by these high-powered and dangerous—if uncontrolled—machines, the provision that a nonresident who purposes to use the highways of the State for motoring, shall agree to submit himself to the Courts of the State into which he voluntarily comes, so far as concerns matters growing out of that use, is neither unconstitutional nor unreasonable.

Both residents and nonresidents are placed upon the same footing, both are made amenable to the laws of the State whose highways they use.

All of which is respectfully submitted.

JOHN W. WESCOTT,
Attorney for Defendant in Error.

JOHN W. WESCOTT,
HERBERT BOGGS,
On Behalf of Defendant in Error.